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THE EVIL TECHNOLOGY HYPOTHESIS:
A DEEP ECOLOGICAL READING OF INTERNATIONAL LAW

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ABSTRACT

This short paper advances the hypothesis that international law, far from being a purely neutral "indeterminate" technology that can lend itself to both good and bad uses, might actually be structurally biased to produce exploitative outcomes. This hypothesis is presented through several steps. The first part presents Martti Koskenniemi's indeterminacy thesis, followed by Anthony Anghie's depiction of international law as a technology. The possibility of an inherent bias of technology, such that it will lend itself to exploitative uses, even with the best of intentions, is then introduced in Section III, using the writing of radical ecological thinkers Ran Prieur and Derrick Jensen. This theory is then discussed specifically in relation to international law in Section IV.

SUMMARY

I.   INTRODUCTION

This paper advances a quite provocative thesis that locates itself in a line of analysis aimed at the radical critique of some of the fundamental assumptions of the modern conception of the rule of law. Such critique is a genuine *pars destruens* in the path to build a radically new conception of the law, based on equality[1] and ecology, rather than on efficiency and property accumulation. Today a strong courageous *pars destruens* is greatly needed because, as Western Lawyers, we are living in an "age of self congratulation,"[2] and thus participating in a worshipping of growth and development through technological progress. Such attitude, particularly diffused in the dominant Anglo-American professional legal setting, should be immediately abandoned for the sake of global survival. The age of self-congratulation easily turns into an age of cynicism (in the sense of Lacan and Žižek), which delegitimizes the politically transformative role of legal scholarship and makes it impotent.

The self-congratulatory attitude (which of course must be exposed as classist and racist) may be hidden even in the apparently more radical paradigms of legal research.[3] Indeed the fundamental idea of this paper emerged in the context of a conference entitled "Towards a Radical International Law" held at the London School of Economics and Political Science (LSE) during May 2011, which placed itself squarely at the heart of such more radical paradigms.

For the conception of this paper, the venue was particularly important, as the conference was held within the architectural structure of the New Academic Building (NAB) at LSE. The NAB is a majestic seven-something-story building that radiates newness and modernity. The perfect building, one would say, to embody the ethos of excellence of the contemporary university. And yet, natural light was distinctively lacking. Small, encased windows and a see-through ceiling were not nearly enough to provide sufficient illumination, requiring the backup of copious artificial lighting. Additionally, stairs were apparently available only up to the first two floors, leaving elevators as the preferred means of transport to reach any higher floors. What kind of person might the architects who designed the building have had in mind as they set out to draw the plans? Clearly, the person must have been someone oblivious to the difference between natural and artificial light. Additionally, that person must also have been someone who values the minimization of "body usage" to reach the classroom, bodies being simply brain vessels.

So, technology (lights and elevators) in the building crucially made it possible for people to hold or develop an ethos of separateness from nature, as well as one's body. And not even to question its awkwardness: all of the conference participants were, in fact, bathing in artificial light and taking those elevators, without even noticing the kind of detachment from their bodies and the world around them that the infrastructure was silently promoting. Maybe, then, this is what international law also does, once we

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[1] *See* UGO MATTEI & LAURA NADER, PLUNDER: WHEN THE RULE OF LAW IS ILLEGAL 202–16 (2008).

[2] *Id.* at 5-6, 19-20.

[3] *See* Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179 (2002).

look at it as a technology. In the sections to follow, we will try to set out the hypothesis that international law might be its own greatest problem, promoting a silent ethos of exploitation of the "other" by reducing empathy and facilitating extraction: this we call the "evil technology hypothesis." The benefit of looking at international law in this way lies in the whole new horizon of questions it opens up, specifically about the scales of our economic system, of our civilization, and of our fundamental dependency on a model of extraction.[4] Just as it would be impossible to inhabit the new LSE building without tremendous consumption of energy, it would be impossible to conceive of international law outside of a human organization based on plunder.

This being the plan, Section II will provide some limited background on the current "radical" debate on international law, focusing in particular on Martti Koskenniemi's "indeterminacy thesis" and Anthony Anghie's depiction of international law as a technology. The tone of Section III marks an abrupt shift from the previous section, as it explores radical ecological literature in order to provide a general illustration of the idea that technology might contribute to an inherently "evil" and detached order in which the environment and those around us are objectified and made easier to exploit. Section IV finally discusses the application of the "evil technology hypothesis" to the realm of international law specifically and looks at what new horizons of questions this hypothesis may then open up.

II.   INDETERMINACY AND LAW AS TECHNOLOGY

A.   *Koskenniemi's Indeterminacy Thesis*

Summarizing the arguments of other scholars in one's own work is always a daunting task, as there is always the risk of over-simplifying, taking out of context, or simply misrepresenting views that are made in a certain argumentative flow which cannot be reproduced in its entirety. With that caveat in mind, this section endeavors to summarize Koskenniemi's argument about the "indeterminacy" of international law, which he famously articulated in the book *From Apology to Utopia*.[5]

Koskenniemi's indeterminacy thesis is, first of all, not simply the observation that language is so open-ended that anything may mean both everything and nothing.[6] Instead, Koskenniemi observes that the uncertainty of the political project behind international law has molded international law into a soft framework in which competing political positions are able to find their way through in legal argumentation.[7] Koskenniemi puts this very clearly in the following passage, which is worth quoting in its entirety:

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[4] A model of extraction can be understood as an economic paradigm where order and prosperity at the center are supported through systematic appropriation of resources from the periphery. *See* ROBERT BIEL, THE ENTROPY OF CAPITALISM 304 (2012). This argument, whereby capitalism thrives on the conquest of an environment that is incompatibile with itself, is at the heart of sustainability-centered critiques of the neo-liberal economic model, which highlight how expansion through commodification of "virgin spaces" cannot go on forever.

[5] MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT, REISSUE WITH A NEW EPILOGUE (2005).

[6] *Id.* at 595.

[7] *See* Jason Beckett, *Rebel Without a Cause? Martti Koskenniemi and the Critical Legal Project*, 7 GERMAN LAW JOURNAL 1045, 105–159 (2006).

[E]ven where there is no semantic ambivalence whatsoever, international law remains indeterminate because it is based on contradictory premises and seeks to regulate a future in regard to which even single actors' preferences remain unsettled. To say this is not to say much more than that *international law emerges from a political process whose participants have contradictory priorities and rarely know with clarity how such priorities should be turned into directives to deal with an uncertain future*. Hence they agree to supplement rules with exceptions, have recourse to broadly defined standards and apply rules in the context of other rules and larger principles. Even where there is little or no semantic ambiguity about an expression in a rule—say, about "armed attack" in Article 51 of the UN Charter—that expression cannot quite have the normative force we would like it to have. It cannot because it is also threatening—what about an imminent attack? The same reason that justifies the rule about self-defence also justifies setting aside its wording if this is needed by the very rationale of the rule—the need to protect the State. And *because no rule is more important than the reason for which it is enacted, even the most unambiguous rule is infected by the disagreements that concern how that reason should be understood and how it ranks with competing ones*: what is it, in fact, that is necessary to "protect the State" and how does that reason link with competing ones such as those of "peaceful settlement"? *It follows that it is possible to defend any course of action—including deviation from a clear rule—by professionally impeccable legal arguments that look from rules to their underlying reasons, make choices between several rules as well as rules and exceptions, and interpret rules in the context of evaluative standards.*[8]

Koskenniemi's position, however, is further complicated by the fact that he does not impute a naïf neutrality to international legal discourse. He recognizes, instead, the presence of a structural bias that systematically favors certain outcomes.[9] As Susan Marks puts it: "things can be, and quite frequently are, contingent without being random, accidental, or arbitrary."[10] For Koskenniemi, however, structural bias does not seem to be grounded in the medium of international law itself, but rather, in the presence of "a professional consensus or a mainstream answer to any particular problem"[11] which, precisely because of international law's indeterminacy, are able to direct it to their ends. This Koskenniemi seems to state quite clearly in the following passage:

[N]othing of our ability to challenge the bias is grounded in the law itself. The choice will be just that—a "choice" that is "grounded" in nothing grander than a history of how we came to have the preferences that we have and what we know of the world and our relationship to it. "Theory" may be

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[8] KOSKENNIEMI, *supra* note 5, at 590–91 (emphasis added).
[9] *Id.* at 607.
[10] Susan Marks, *False Contingency*, 62 CURRENT LEGAL PROBLEMS 1, 2 (2009).
[11] KOSKENNIEMI, *supra* note 5, at 607.

> needed to create awareness of the origin and consequences
> of our choices—perhaps a theory of "justice" or of economic
> efficiency—but those theories do not fully justify our choices.
> A "gap" will remain between all such languages and what it is
> that we choose, whether the bias, or its contrary. The
> existence of this "gap" is not insignificant for professional
> practice. If the practice is not determined by an anterior
> structure or vocabulary, then it cannot be reduced to an
> automatic production of such a structure or vocabulary
> either. The decision is made, and its consequences are thus
> attributable not to some impersonal logic or structure but *to
> ourselves*.[12]

To restate the point, Koskenniemi appears to articulate a political "malleability" of international legal discourse, which is smuggled in at the rupture between international law's formality and the fluidity of political reason. This means that international law is not, in and of itself, the problem. Rather, the problem is the inability of international lawyers to reclaim what is theirs, namely the ability to engage with the political side of international law. While international law is in practice "steered" by an invisible consensus hidden under the cloak of professionalism, by removing that cloak, international law could become something different thanks to a renewed political awareness and thereby serve different ends from those it currently privileges.

B. *Anghie and Law as Technology*

Anthony Anghie comes from a different starting point. Namely, he sees the very development of international law as inextricably tied to imperialist practices. For Anghie, in particular, a crucial role is played by the idea of "sovereignty," which:

> [E]xpels the non-European world from its realm, and then
> proceeds to legitimise the imperialism that resulted in the
> incorporation of the non-European world into the system of
> international law. The process of transforming the non-
> European world is completed through decolonisation, which
> enables the non-European state to emerge as a sovereign and
> equal member of the global community.[13]

However, despite recognizing that "[t]his exclusion, and the imperialism which it furthers, constitute in part the primordial and essential identity of international law,"[14] Anghie still appears sympathetic to the idea that international law could be changed from within to serve "nobler" ends,[15] thereby ending closer to Koskenniemi than his starting point may suggest. For the purpose of this piece, however, Anghie's work is particularly interesting for it crucially likens international law to a technology:

> The nineteenth century was the age of science, during which
> industry was applied for the betterment and progress of

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[12] *Id.* at 615.

[13] Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27 THIRD WORLD Q. 739, 741 (2006) [hereinafter Anghie, *Evolution*].

[14] ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 315 (2004).

[15] *See id.* at 318.

> human society. We see here the suggestion that international
> law is not merely a science but a technology. As a technology,
> it could help realize the Victorian ideals of progress,
> optimism, and liberalism, which, when applied specifically to
> the non-European world, meant the civilizing of the
> benighted native peoples.[16]

The definition of technology that Anghie seems to presuppose here is that of *a means to facilitate ends the positive value of which is assumed*.[17] So, for instance, in Anghie's reconstruction of the colonial formation of international law, the latter is presented as a tool that was adopted to pursue the "obviously" good objective of civilizing non-Western peoples through trade.[18] What the law-as-technology language hid, of course, was the fact that the obvious goodness of the civilizing mission was not so obvious after all, and actually based on a value-laden differential construction of the "other."[19] This shows that, in Anghie's and Koskenniemi's perspective, the problem with law's technological character appears simply to be that it directs the focus away from the political agenda. It follows that, by re-awakening its political soul, international law could still be used to promote more "worthwhile" ends (according to the international lawyer's own value-judgments). The end, therefore, justifies the means (i.e., using international law to deliver a desired outcome).

The argument we seek to make in the next two sections, however, goes one step further than this. We assume as a starting point that the international legal project incrementally turned into the global framework of imperial law[20] by excluding global resource redistributions other than those maintaining the bottom line. As an incrementally expanding "reactive" institutional setting, international law has seized the historical opportunity produced by the demise of the Soviet model[21] to develop a strong global alliance with corporate power. This alliance has transformed international law into a disorder-spreading technology,[22] thus producing a global institutional scenario that progressively transfers common resources in corporate control by legitimizing plunder.[23] We more clearly contend here that such global transformation does not even require conscious political agency at this point. Indeed, the very interposition of a technology in the pursuit of a particular interest increases the distance between oneself and the "other," and this invariably works to enable the expansion of

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[16] Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. J. INT'L. L. 1, 64 (1999) [hereinafter Anghie, *Peripheries*].

[17] A very similar argument is made by Ugo Mattei and Laura Nader. *See supra* note 1, at 5, 75 (2008).

[18] Anghie, *Peripheries*, *supra* note 16, at 57.

19 According to Anthony Anghie, this process involves the creation of "a gap between two cultures, demarcating one as 'universal' and civilized and the other as 'particular' and uncivilized." Anghie, *supra* note 14, at 4. A gap which is then exploited to "normalize" the "inferior" culture through a range of techniques. *Id.* A contemporary example of this "dynamic of difference" is presented by Ugo Mattei and Laura Nader, in their monograph discussing the use of the "rule of law" precisely as a tool to demarcate the "developed" from the "underdeveloped," and subsequently to intervene upon the latter in exploitative ways. *See* MATTEI & NADER, *supra* note 1, at 71 ff.

[20] *See* Ugo Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance,* 10 IND. J. GLOBAL LEGAL STUD. 383 (2003).

[21] *See* Boris N. Mamyluk & U. Mattei, *Comparative International Law*, 36 BROOK. J. INT'L L. 385 (2011).

[22] *See* Kees Keizer, Siegwart Lindberg & Linda Steg, *The Spreading of Disorder*, Vol. 322- No. 5908 SCIENCE 1681–85 (2008).

[23] *See* MATTEI & NADER, *supra* note 1.

unsustainable and exploitative relationships to the human and other-than-human inhabitants of the planet, even under the best of intentions. This, in other words, is the "evil technology hypothesis."

III.   THE EVIL TECHNOLOGY HYPOTHESIS

This section introduces the "evil technology hypothesis" in relation to technology in general, with a view to applying it to international law in Section IV. The hypothesis is based on two premises. The first one is that technology, by facilitating activity on the part of an "actor" on an "acted on," increases the rift between them so that the former finds it easier to experience the latter as an object other than him or herself. This allows "use" of that object and breeds in the "actor" the impression that the "acted on" only exists to be acted upon by the "actor." The second premise is taken from the work of ecological philosopher Derrick Jensen, namely that civilization, understood as the growth of communities larger than the landbase they are dwelling on is able to support, is inherently unsustainable and needs an increasing reliance on trade. Trade which must be kept going at all costs (lest starving the centers of much-needed resources for their continuing existence), even through violence if necessary.

Turning to the first premise, the dis-empathizing potential inherent in the use of technology—of any technology—is illustrated by radical ecologist Ran Prieur in his zine *Civilization Will Eat Itself* through a hypothetical example.[24] Prieur suggests to imagine a group of super-intelligent monkeys that learn to use spears. Spears make it easier for monkeys to kill, as opposed to using their bare hands:

> So spear-using monkeys would kill in more ordinary circumstances, and more often. They would learn that spear-killing could get them better land, and better food, and better mates.
>
> They would get used to pleasures they could get only through spear-killing. Worse, they would lose the skills they needed to live without spears. Now, to give up their habit of making and using spears would be so painful that it would be impossible if you had the self-discipline of a monkey.
>
> Now, if you have the awareness of a monkey, you will experience your spear-killing societal pattern as an uncompromisable necessity, and you will viciously attack anything that threatens it. But what threatens it is the expansion of your own empathy. If you—or other monkeys—start feeling as close to a monkey at the end of a 30-foot spear throw as you used to feel to a monkey right in front of you, if it starts to get as hard for monkeys to kill with spears as it used to be to kill with bare hands, then you fear that the spear-killing technology will become emotionally unsustainable, and your civilization will collapse, and you

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[24] RAN PRIEUR, CIVILIZATION WILL EAT ITSELF (A4-formatted ed. 2001), *available at* http://theanarchistlibrary.org/pdfs/a4/Ran_Prieur__Civilization_Will_Eat_Itself_a4.pdf.

> will lose your economic advantages, and you and your friends and family will suffer and maybe die.
>
> So you viciously attack the expansion of your own empathy, and the empathy of others. Monkeys learn and teach others to stick a boundary between "self" and "other", to sustain fear and hatred indefinitely, to greet the unfamiliar with mistrust and discomfort and hostility, not curiosity and excitement and acceptance. And here, I say, is where the monkeys become what we call evil: when dependence on a harmful behavior leads them to inhibit their love.[25]

While in Prieur's example the focus is solely on the empathy between "monkeys," it is submitted that the example could well be extended—at least from the perspective of "deep ecology"—beyond the feeling of empathy between beings of the same species. Deep ecology is the "branch" of ecology that focuses not just on "conservation" for anthropocentric survival concerns, but on re-defining the basic paradigm of the relation between humans and nature.[26] It posits an underlying kinship between human and other-than-human beings, which has been explained, for instance, through a *panpsychist* understanding of the world that regards consciousness as a property inherent in all matter. In this framework, human consciousness simply becomes a property emerging out of the complex interaction of consciousness already present in matter.[27] Adopting such a perspective, it becomes possible to argue that a basic empathy between human and other-than-human beings is at the root of life on the planet, so that something meaningful is also lost whenever the other-than-human world is objectified and made subservient to human needs.

Returning to the "evil technology hypothesis," once technology enables "a disconnection and contraction of consciousness, a forced channeling of wider energies to serve narrower interests,"[28] a growth mechanism is set in motion whereby those narrower interests (such as the reproduction of a particular community), after being "privileged" through technology, finds room to expand and take a life of their own:

> You start doing it because it gives your pinched-off perspective (your side, your cause, your "self," your status, your money) some advantage, and then you get yourself drawn into doing it more and bigger, and you forget how to get along without it, and you use it to build and maintain ways of being that you don't know how to build and maintain without it.[29]

Additionally, technology also leads to more technology to keep sustaining a technological civilization, since "[t]he pattern repeats itself with more and more new habits enshrined and imprisoned in new physical artifacts."[30] For our purposes, it is relevant to observe that the growth dynamics of narrow

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[25] Ran Prieur, Civilization Will Eat Itself 27–28 (A4-formatted ed. 2001), *available at* http://theanarchistlibrary.org/pdfs/a4/Ran_Prieur_Civilization_Will_Eat_Itself_a4.pdf.

[26] *See* Jane Holder & Maria Lee, Environmental Protection, Law & Policy 48-50 (2d ed. 2007).

[27] Stephan Harding, Animate Earth: Science, Gaia and Intuition 93–94 (2nd ed. 2009).

[28] Prieur, *supra* note 25, at 10.

[29] *Id.* at 10–11.

[30] *Id.* at 29.

interests served by technology equally appears to be at the heart of what Jensen sees as the unsustainable character of civilization, which he defines as:

> [A] culture . . . that both leads to and emerges from the growth of cities . . . with cities being defined—so as to distinguish them from camps, villages, and so on—as people living more or less permanently in one place in densities high enough to require the routine importation of food and other necessities of life.[31]

The dependence on trade generates a compulsion to secure the inflow of resources into the center, however that center may be defined (city, region, state, coalition). A compulsion which, if initially sustained through overtly violent means, is later sustained through "an appearance of beneficence and helpfulness, sufficient to awaken some degree of affection and trust and loyalty."[32]

Here, then, is the essence of the "evil technology hypothesis": technology enables specialized care of certain narrow interests, which are consequently abstracted from the environment they originate from—and are symbiotically embedded in—to begin with. This separation facilitates the subordination of the same environment to such narrower interests, igniting positive feedback loops that reinforce their expansion.[33] In relation to human communities, in particular, the use of technologies can be seen as the spark that, by positing "man" in antithesis to the "environment," sets off the exploitation of the latter by the former, igniting the growth of unsustainable human communities that are out of sync with the landbase they dwell on and require secure inflows of energy to sustain themselves. Most importantly, as a community takes the path of technology, it grows increasingly unaccustomed to living without technology, looking down to non-technological ways of living as being somewhat backwards, and re-defining its own standard of living as the "correct" one.[34]

To contextualize this in relation to the above discussed architecture of the NAB at LSE, the use of the elevator—regardless of whether I am using it because I am tired or just lazy—still pries me further apart from my body, to the point that by always taking the elevator I become increasingly unable to even experience tiredness, as I pass up opportunities to establish a connection with my body in climbing a flight of stairs. Additionally, using the elevator makes me look down on older buildings that do not have one, as it engenders an expectation that buildings should have one. Technology induces needs, false wants that only technology itself is later able to fulfill. Massive advertising of last generation smart phones in African rural settings shows in practice the impact of technology on deeply rooted behavior

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[31] DERRICK JENSEN, ENDGAME, VOL. 1: THE PROBLEM OF CIVILIZATION 17 (2006).

[32] *Id.* at 105, quoting LEWIS MUMFORD, THE CITY IN HISTORY: ITS ORIGINS, ITS TRANSFORMATIONS, AND ITS PROSPECTS 36 (1961).

[33] It is worthwhile to observe the similarity of this description to the 'autopoiesis' of specialized social systems in Niklas Luhmann's social systems theory, and to the related growth imperative described in Gunther Teubner, Two Readings of Global Law, Paper Presented at the "Law of the Commons" Seminar, Turin (Mar. 10, 2011), *available at* http://uninomade.org/two-readings-of-global-law/ [hereinafter Teubner, *Two Readings*]. *See also* FRITJOF CAPRA, THE HIDDEN CONNECTIONS 70 ff. (2002).

[34] PRIEUR, *supra* note 25, at 30–31. This is translated in legal terms with the idea of "lack," as described in MATTEI & NADER, *supra* note 1, at 7, 67–76.

transformed by such new necessities.[35] Even in remote villages today people "call" before visiting friends and relatives. This of course produces separation, individualization of spaces, and consequent disruption of feelings of community.[36]

There are two further points to be made. First of all, as having elevators (or smart phones) becomes constitutive of the idea of a "good society," this justifies the extraction of resources to uphold a lifestyle in which elevators (and smart phones) are present. Secondly, and perhaps most importantly, as I come to see elevators and smart phones as an increasingly coessential aspect of a "good life," a whole bundle of connected ideas is silently smuggled in my worldview (such that one should not get tired, or feel tired, or that taking the stairs is somewhat of a nuisance, even though it affords a greater opportunity for me actually to be with my body and be attuned to what it has to tell me). Such ideas, which I might not wish to hold upon careful reflection, are mirror images of the same subject-object dichotomy that is one of the fruits of technology (e.g., elevators being a technology to move "weight"—that's how reductively my body comes in the picture— across vertical space). In the domain of the law, based as it is on notions of rights, privacy, and discrete spaces, the diffusion of technology usually produces more individualization and consequent decline of care for the public (or relational) spaces. Spaces and practices left behind by technological evolution fall abandoned. For instance "giving a call" will likely substitute a visit in village contexts just as American colleagues today exchange e-mails across the corridors of academic departments, thus abandoning real visits and knocking on the door. Usually stairs, assumed to be scarcely used, are left dirty and undecorated even in five-star hotels. The diffusion of cell phones has produced the virtual disappearance of public telephones (now extremely difficult to locate), and internet cafes (which are relatively socializing spaces) are likely to be put out of business by the diffusion of smart phones. The private and the public very rarely can live together since the latter is always colonized by the former.

IV.   INTERNATIONAL LAW AS AN EVIL TECHNOLOGY?

A. *The Social Engineering Posture*

There are several ways in which the "evil technology hypothesis" may be applied to international law. First of all, international law can be seen as yet another technology needed to sustain an increasingly exploitative and unsustainable lifestyle gone rogue at the global level. As said by a participant at the aforementioned LSE conference, the function of international law might simply be to persuade the winners that they are "in fairness" entitled to the resources they have taken, as well as to persuade the losers that, after all, they have lost a "fair" game, and they should not complain. As it has been said, international law "confers a degree of ethical respectability and moral acceptability to the selfish resistance by the strong and rich to disgorge, to

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[35] *See generally* Jenny C. Aker and Isaac M. Mbiti, *Africa Calling: Can Mobile Phones Make a Miracle?*, BOSTON REVIEW (Mar.-Apr. 2010), *available at* http://bostonreview.net/BR35.2/aker_mbiti.php.
[36] *Cf.* Thomas A. Kelley III, *Cell Phones and Oracles: Legal Globalization Meets the Marabout's Mystical Justice in the West African Republic of Niger* 37, 46 (University of North Carolina Research Paper Series, Paper No. 05-22, 2005) (illustrating how the bulk of the workload of rural courts in Niger consists of cell phone thefts).

the poor and weak, part of their unfair share of global resources accumulated by plunder."[37] Even if we set out to use it with the greatest possible benevolence, it still functions as the proverbial stick in Ran Prieur's "parable of the monkeys."[38] Namely, it still serves to reduce the room for empathy between the international lawyer and the human or other-than-human beings that will be affected by his or her decisions. International law is perhaps inextricable from a certain flavor of social engineering,[39] in which human and other-than-human beings are simply those at the receiving end, whom and which the most well-intentioned international lawyer might sincerely be willing to help. As if help did not force the receiver into the mold of being "in need of help" (according to whose worldview?). This is nicely illustrated in relation to the concept of poverty, as opposed to wealth, by ecological philosopher Satish Kumar:

> For millennia there have been peoples all over the world who lived in great simplicity without ever considering themselves "poor," "underdeveloped" or "uncivilised." My own family in Rajasthan lived without the trappings and trivia of what is considered to be rich and advanced, and yet we never thought of ourselves as "poor."[40]

Mattei and Nader have been attuned to this perverse characteristic of international law, showing how it is often the case that truly well-meaning people partake in a game bigger than themselves as they fiddle with international law. These, Mattei and Nader call the "do-gooders."[41]

China Miéville appears to show an equally skeptical stance towards the role of international law.[42] First of all, he observes how the positing of formal equality between the different actors of international law yields an effect similar to that which Prieur discusses in relation to technology in general: namely, formal equality abstracts and isolates a given relationship, enabling the selective channeling of energy into that relationship without looking back. In Miéville's terms, this selective channeling of energy comes in the form of "unequal violence" within a framework of abstract juridical equality, whereby "[f]or the state that knows that its interpretation will 'win,' that it has the power to effect authoritative legal interpretation, the spread of juridical equality is not only no block to domination: it can be conducive to it."[43] It is from such premises that Miéville then comes to the conclusion that "[a] world structured around international law cannot but be one of imperialist violence."[44] One can predict here that the spread of international law as a technology will invariably make domestic law decline (just as the elevators make the stairs decline or cell phones produce the disappearance of public phones) in importance and meaning, eventually endangering the sustainable difference in the law[45] by universalizing the corporate-friendly atmosphere of imperial law (something that is already clearly happening).

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[37] MATTEI & NADER, *supra* note 1, at 197.

[38] *See supra* note 21.

[39] ANGHIE, *supra* note 14, at 154.

[40] SATISH KUMAR, YOU ARE THEREFORE I AM: A DECLARATION OF DEPENDENCE 116 (2002).

[41] MATTEI & NADER, *supra* note 17, at 15.

[42] *See* China Miéville, *The Commodity-Form Theory of International Law: An Introduction*, 17 LEIDEN JOURNAL OF INTERNATIONAL LAW 273 (2004).

[43] *Id.* at 297.

[44] *Id.* at 302.

[45] *See* H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW 318 (2000).

B. *The Question of Scale*

Secondly, and perhaps most importantly, positing the problem in terms of the need to "fix" international law might just be the equivalent of someone thinking about how to bring elevators to buildings that have none, assuming we need elevators in the first place. Do we need international law? What questions does international law prevent us from asking, thereby acting as a smokescreen? In our view, the great loss from a system of international law is that it leads one to think of the global system of economic relations as natural and not as a contingency magnified by history and, yes, international law itself.[46] Are we ultimately able to use international law, or are we simply being used by international law to pursue an impersonal growth dynamic inherent in the system?[47]

James Tully provides a good inroad into the issue of the scale of human activity on the planet, specifically from the perspective of international law. In a paper illustrating how the development of constitutional democracy is inseparable from the surrounding imperialist system of international legal relations,[48] he introduces the possibility of de-imperializing constitutional democracy by a process of retrieval of "indigenous" constitutional forms, the defining character of which is their ability to "flow" along with the activity of the people, rather than being superimposed to them.[49] The purpose of this would be to facilitate direct participatory freedom through the creation of "networks of globalization in which the constitutional form of the network is based on the ongoing democratic and non-violent exercise of constituent powers of the partners who subject themselves to it."[50] For the purpose of this paper, Tully's idea of "ongoing . . . exercise of constituent powers"[51] seems to allude to a dimension in which the differentiation of constitutional powers (e.g. economic, military, and political power) blurs into an inextricable totality. The way this relates to the question of scale is by suggesting that the separation of different realms of human activity[52] might arise primarily in a society that is global in its reach, and requires a technological "channeling of wider energies to serve narrower interests."[53]

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[46] KOSKENNIEMI, *supra* note 5, at 614.

[47] Once again, there is a parallelism here with Teubner's autopoietic theory of law, first presented in GUNTHER TEUBNER, AUTOPOIETIC LAW: A NEW APPROACH TO LAW AND SOCIETY (1987), as well as with his warnings about the dangers inherent in the expansionist impersonal dynamics internal to social systems, on which see Gunther Teubner, *The Anonymous Matrix: Human Rights Violations by "Private" Transnational Actors*, 69 MODERN LAW REVIEW 327 (2006) and Teubner, *Two Readings*, *supra* note 33.

[48] James Tully, *The Imperialism of Modern Constitutional Democracy*, *in* THE PARADOX OF CONSTITUTIONALISM: CONSTITUENT POWER AND CONSTITUTIONAL FORM 315–338, (Martin Loughlin & Neil Walker eds. 2008).

[49] *See id.* at 320.

[50] *Id.* at 337.

[51] *Id.*

[52] In the language of social systems theory, we are referring to *functional differentiation*, for a definition of which, see *infra* note 53.

[53] PRIEUR, *supra* note 25, at 10. It is, after all, a feature of functional differentiation—i.e. the breakdown of global society into highly-specialized realms of social activity such as law, politics and, indeed, also law—that of being in principle all-inclusive, projecting a demand on people the world over to partake in these specialised "conversations," so as to undertake a career within the specialized social systems. And, yet, as Moeller aptly puts it:

> [M]any have no access whatsoever to careers and are reduced to a bodily existence without social identity—or with a strictly negative one. Children born in the *favelas* of Central America have no careers, not even unsuccessful ones, to identify themselves with. They often do not have the chance not to graduate

So, at the cost of reading more into Tully's ideas than he originally might have assumed, it could be said that what he really argues for is a de-technologization and de-specialization of social interaction, disclosing a realm (not of specialization) but of "vital connections—connections more like the fiber of what we call nature where there aren't barriers between the relationships of things to each other . . . [where] everything branches into everything,"[54] a realm where religion, politics, or economics fade out in the blur of "human beings behaving in certain ways."[55] A similar argument appears to also be made by Mattei and Nader, as they advocate the leveraging of local laws, understood as:

> [A] different force not grounded, as is the imperial rule of law, in the needs of corporate capitalist development masked as efficiency[:] [p]eople violated in their sense of justice or threatened in chances of survival (which is often the same thing) are inventing, through networks and groups, legal and pre-legal ways of dealing with life-harming problems and ultimately with issues of resource distribution.[56]

If, then, one is to take seriously this idea of a space unfettered by differentiation into separate specialized realms of activity, the discussion cannot be restricted to law or politics, but it must embrace human lifestyles in their totality. For international law to fade into oblivion, the scale of economic activity on the planet and, before that, the logic of domination and objectification of human and other-than-human beings that is often deeply entrenched in people's hearts and minds (whether they know it or not) have to come under our radar.[57] E.F. Schumacher famously advocated a shift in lifestyle and worldview to accommodate such goals:

> [O]ur most important task is to get off our present collision course. And who is there to tackle such a task? I think every one of us, whether old or young, powerful or powerless, rich or poor, influential or uninfluential. To talk about the future is useful only if it leads to action *now*. And what can we do *now*, while we are still in the position of 'never having had it so good'? To say the least—which is already very much—we must thoroughly understand the problem and begin to see the possibility of evolving a new life-style, with new methods of production and new patterns of consumption: a life-style designed for permanence. To give only three preliminary

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or have a low income or to lose an election. Social inclusion through careers only includes those with access to function systems. (HANS-GEORG MOELLER, LUHMANN EXPLAINED: FROM SOULS TO SYSTEMS 93 (2006))

Teubner himself recognizes that the critique of the totalizing tendencies of global capital should actually boil down to a critique of functional differentiation. *See* Teubner, *Two Readings*, *supra* note 33.

[54] JENSEN, *supra* note 31, at 167.

[55] Research Centre Vergelijkende Cultuurwetenschap, *Prof. Timothy Fitzgerald — On Religion and the Secular, Part 2*, YOUTUBE (Jan, 21, 2008), http://www.youtube.com/watch?v=puRsboyTq_I&feature=related.

[56] MATTEI & NADER, *supra* note 17, at 211.

[57] This is why, after all, there was a lurking contradiction between the locked up LSE building—and the ethos of separatedness it promoted at the individual level—and the ethos of universal connectedness that all conference participants eventually seemed to share in their (perhaps paradoxical in the light of this paper) commitment to a more just international law.

> examples: in agriculture and horticulture, we can interest
> ourselves in the perfection of production methods which are
> biologically sound, build up soil fertility, and produce health,
> beauty and permanence. Productivity will then look after
> itself. In industry, we can interest ourselves in the evolution
> of small-scale technology, relatively non-violent technology,
> 'technology with a human face', so that people have a chance
> to enjoy themselves while they are working, instead of
> working solely for their pay packet and hoping, usually
> forlornly, for enjoyment solely during their leisure time. In
> industry, again—and, surely, industry is the pace-setter of
> modern life—we can interest ourselves in new forms of
> partnership between management and men, even forms of
> common ownership.[58]

For the purpose of this paper, the greatest merit in Schumacher's argument is its specific focus on scale: it is perhaps stating the obvious that, if men can manage anything, it is on a small scale. Otherwise, as the scope of human interaction attains a global dimension, it is a very real possibility—masterfully described by Niklas Luhmann's social systems theory—that men come to be prey of their own creation in a revolt-of-the-machines-type of scenario. Namely, as human communication achieves a certain scale, it starts branching out into separate realms (e.g., legal, political, or economic) and develops its own internal dynamics with respect to which human and other-than-human beings are simply an external variable, but lack direct control on.[59]

Looking at international law with the idea of determining the appropriate scale of economic and social interaction, the question as to whether the evil technology hypothesis can be a fitting representation of international law or not might even be beyond the point. In fact, the power of a hypothesis is that it enables counterfactual reasoning that unlocks new theoretical possibilities. In light of this, engaging in a serious discussion about the most appropriate scale of economic activity—and of twinned systems, like law, that enable the latter's functioning[60]—appears to be a meaningful pursuit in its own right that also deserves membership in the to-do list of a Radical International Law movement.

V.   CONCLUSION

This paper has sought to provide a radical ecological reading of international law by articulating the "evil technology hypothesis." For this purpose, Section II has introduced Martti Koskenniemi's indeterminacy

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[58] E.F. Schumacher, Small is Beautiful: Economics as if People Mattered 21–22 (1975).

[59] See Moeller, *supra* note 53, at 22–23; Niels Åkerstrøm Andersen, Discursive Analytical Strategies: Understanding Foucault, Koselleck, Laclau, Luhmann 75 (2003).

[60] A similar point is made by Sundhya Pahuja, when she articulates the need to reclaim "the possibility of discussion about *whether* growth is the correct lens through which to view the social or political questions which economics seeks to answer" (Sundhya Pahuja, Decolonizing International Law: Development, Economic Growth and the Politics of Universality 372 (Melbourne Law School, Legal Studies Research Paper No. 520, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1743269).

thesis, whereby the uncertain political grounds of the liberal project behind international law have made international law prone to become an instrument that is able to justify even radically opposing outcomes, depending on the political motivations a certain international lawyer may decide to pursue in each particular case. This has been followed by a brief foray into Anghie's theory about the colonial genesis of international law and, most importantly, his depiction of international law as a technology, i.e., as a means to pursue ends, around which the value-judgments are assumed to be uncontroversial. The Section has restated, as the starting point of our further argument, the idea of international law as incrementally transformed by corporate interests into imperial law, a reactive institutional setting which effectively precludes the possibility of distribution in favor of weaker actors.

Section III has then investigated the possibility that technology in general—far from being a form that can accommodate different uses—is actually "evil" in itself, in that it privileges certain modes of relation to the human and other-than-human world that systematically favors objectification of the "other" and an ethos of domination over people and the planet. Secondly, the ability of technology to channel energies into narrow pursuits has been regarded as one possible factor behind the unsustainable growth of civilization, understood as a pattern of human living that (based as it is on elevation of the reproductive interest of a certain human community above the possibility for other human and other-than-human communities equally to renew themselves) is incapable of being supported by the landbase and requires trade and extraction of resources.

These insights, articulated in ecological literature, have then been translated in the field of international law in Section IV. First of all, it has been said that—just like any technology—international law promotes a certain distance between its "actors" and its "acted on," which promotes a posture of social engineering that objectifies and often vilifies the "other." A substantial convergence has been found, in this respect, with China Miéville's position about the non-neutrality of international law, not only in its uses, but also precisely as a medium. Secondly, it has been observed that international law, by being what international lawyers by default tend to turn to, actually prevents the possibility to question the scale of the economy and the system of international law that supports it. In the end, regardless of whether one agrees or not with the proposal that international law may simply be an "evil technology," the chance should not be passed up to engage in a serious and open discussion about whether human activity on the planet should happen on such a grand scale as to even require a system of international law to be in place.