The 'so-called' universal law: a historical analysis on the centrality of private trade and capital accumulation in the development of public international law[1]

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Today, 13th December, is a special day. I am not only defending my doctoral thesis, but today we also celebrate Santa Lucia (or Saint Lucy), an early-fourth century virgin martyr. According to legend, she brought food and aid to Christians hiding in the Roman catacombs wearing a candle-lit wreath on her head. Nowadays, Santa Lucia's Day is celebrated as a festival of lights, bringing hope and light during the darkest time of the year. Something that I am perhaps less able to offer based on the research results of my thesis. The title of my thesis is: the 'so-called' universal law: a historical analysis on the centrality of private trade and capital accumulation in the development of public international law. Accordingly, I have analyzed the historical-structural limitations of modern international law to bring 'justice' to world affairs and to protect universal aims relating to environmental protection, protection of human rights, maintenance of international peace and security, and so on. Justice is understood in here in general terms, as an ideal that people/states ought to be treated fairly, impartially and reasonably by the law and the arbiters of law. It entails the requirement that laws ought to ensure that people/states do not harm one another and in case harm is inflicted, a remedial action is taken in due course.

Now, my intention is to seek an understanding and explanation to the obvious incompatibility of international law in between of its particular means and universal aims – the ascending self-interest of individual states and the descending general interest of 'international community'.[2] This refers to the gap in between international law's existence as a specific body of rules and the promise of justice towards which that constellation of rules gestures.[3] A gap that arises from international law's invincible promise, an imaginative appeal that "law be something more than simply rules-plus-violence".[4] As the title indi-

1 This text is the author's *lectio praecursoria* delivered on 13 December 2025 at the public doctoral defense held at the Faculty of Law, University of Helsinki, where the author defended her dissertation "The 'so-called' universal law: a historical analysis on the centrality of private trade and capital accumulation in the development of public international law". The opponent was Assistant Professor Tor Krever from the University of Cambridge and the custos was Professor Päivi Leino-Sandberg from the University of Helsinki. For the synopsis, see Katja Keinänen, The 'so-called' universal law: a historical analysis on the centrality of private trade and capital accumulation in the development of public international law, Dissertationes Universitatis Helsingiensis 505/2025, University of Helsinki.

2 Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument, Lakimiesliiton Kustannus 1989.

3 Pahuja, Sundhya, Decolonising International Law: Development, Economic Growth and the Politics of Universality, Cambridge University Press 2013, p. 33, 97; Derrida, Jacques – Borradori, Giovanna, Autoimmunity: Real and Symbolic Suicides, A Dialogue with Jacques Derrida, p. 85-137. In Borradori, Giovanna, Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacque Derrida, The University of Chicago Press 2003, p. 114-115.

4 Pahuja 2003, p. 97.

cates, the capacity of modern international law to bring justice to world politics or even to further the minor ends of its universal declarations, multilateral conventions, etc. has often failed. And, this failure has to do, I believe, with the dominant role of private trade and capital in the evolution of international law. The result being a structurally biased (bourgeois) international law instrumental by forcefully advancing not only the interests of powerful states and stakeholders but also those of global capital. As it seems, if there was a shared universal interest that might be furthered by international law, that was an interest of trade and capital. Therefore, universality of law is in here only 'so-called.'

The title of the thesis seeks inspiration from Part Eight of *Karl Marx*'s Capital of Volume 1 called "So-called Primitive Accumulation".[5] For Marx too found the expression used, in his case, by classical political economists inadequate to describe the true nature of the events related to this historical process of divorcing direct producers from the means of production. The reason I wrote my thesis was to understand better the strengths and weaknesses of modern international law, to explain why international law seems to struggle so often to realize the ends its advocates claim that it can help realize. The difference that could also be described as that in between "law-in-books" and "law-in-action", the disparity between law's intentions and its actual impact on social conditions.[6] The full-scale invasion of Ukraine by the Russian Federation, is one of the most recent examples. For despite the UN Charter prohibiting the use of force, the UN General Assembly's resolution condemning Russia's aggression and the International Criminal Court's arrest warrant against President *Putin*, the war has lasted nearly four years already. Another pressing question is the genocide committed by Israel against Palestinians in the Gaza Strip. In its report, the UN Independent International Commission of Inquiry concluded that Israeli authorities and security forces had committed genocidal acts defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. These included the killing of Palestinians, blocking humanitarian aid leading to starvation and disregarding the orders of the International Court of Justice.

These two cases are only the more recent examples of the prevailing challenges of modern international law. Unfortunately, the problem is more general in nature. For despite the growing number of international rules and institutions, war, poverty, environmental degradation, social dislocation, etc. are still very real for the many people around the world. Based on the experience of more than a century, it may be said that international law has not been able to live up its expectations to transform world into a better place. Founded on my research results, I share the conception of the Marxist legal theory and the critical legal studies that international law is a constituent of politics. The fact that we live in a world of conflict and crisis is, as noted, "not in spite of international law, it is partly because of it."[7] International law is, therefore and in general terms, more part of the problem than of its resolution. This conclusion will also form the theoretical basis of the argument of my thesis. That is, the myth of the existence of a

5 Marx, Karl, Capital: A Critique of Political Economy. Volume 1, Penguin 1990.

6 Banakar, Reza, Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity. Springer 2015, p. 6, 54.

7 Marks, Susan, International Judicial Activism and the Commodity-Form Theory of International Law. European Journal of International Law 18/2007, p. 199-211, at 202.

truly universal law. Based on the theories of natural law and commodity-form of international law, I claim that these problems of international law are fundamental. They derive from the structures of international law itself, its historical origins in private trade.[8] The very form originally of commodity exchange between private property owners that had emerged to preserve the most essential of natural rights, the right of every individual to fulfill his/her basic needs through commerce or otherwise.

In hands of the early natural law theorists in the sixteenth century Spain, this form of early commercial/capitalist relations – the relation of equivalence – became the form of international law as well. I claim that the historical legacy of these Salamanca scholars is crucial to international law. For it was precisely the formal equality and reciprocity of international law, the very doctrines of state sovereignty and sovereign equality that justified unequal distribution of global wealth and power between different states and stakeholders.[9] The reasons are twofold. Firstly, adopting the form of private commodity exchange as the form of inter-state relations, international law simultaneously legitimized the law of the strongest.[10] This structurally biased international law dominated also the process of becoming a state in the first place. For it was reserved for more powerful and successful members of international community to decide which new states were eligible for the full set of international rights and duties.[11] Secondly, this 'force' or 'violence' embedded in international law entailed a more material dimension as well. For individual state's sovereignty, its 'free' and 'equal' status with other states was conditional from the start.[12] It was subject to state's willingness to offer a very specific and narrow set of individual rights within its territory. These individual rights to property, contract and profit-making were designed to facilitate the functioning of capitalist relations of production and exchange.

Rather than peace and prosperity, this early international law resulted in the intensified commercial wars and organized state violence. And the way in which the emerging capitalist society was increasingly governed by bourgeois law and its institutions necessary for the capitalist accumulation. What I am trying to say here is that international law and capitalism developed together during the several centuries, one being dependent on the other. They both shared the same legal form, which had devastating effects especially in the field of international law limiting its regulatory capacity from the start. This story of capitalist international law begins in the early modern Europe following the discovery of the New World of America in 1492. Established by the writings of the Salamanca scholars in general and those of *Francisco de Vittoria* in particular, it came to justify the Spanish colonial and commercial expansion to the Americas. This early international law facilitated the functioning of the mechanisms of international trade and capital accumulation. It advanced the shared profit-making interests of the European empires, trading companies and private entrepreneurs

8 Pashukanis, Evgeny, International Law, reprinted as an appendix in China Miéville, Between Equal Rights: A Marxist Theory of International Law. Haymarket Books 2005, p. 321-335.
9 See especially Angie, Antony, Imperialism, Sovereignty and Making on International Law. Cambridge University Press 2005.
10 Miéville 2005, p. 136.
11 Parfitt, Rose, The Process of International Legal Reproduction: Inequality, Histography, Resistance. Cambridge University Press 2019, p. 37.
12 Ibid., p. 4-6.

including traders, lawyers, soldiers, sailors, missionaries, bankers, etc. No distinction was made in between trade or war, in international legal ruling or otherwise.

It was this moment in history that gave impetus for the institutional transformation necessary for the development of capitalist mode of production and modern international law. For the European commercial and capitalist expansion required a common form and thus the real guarantor of market exchange. It needed political stability and predictability: the existence of a state ('political') was necessary for the uniform application and enforcement of laws and harmonious reproduction of the early capitalist relations ('economic').[13] The early capitalist form of international law and its main institutions were inaugurated by Vitoria's system of *ius naturae et gentium*. It was these institutions of labour, production, commodity exchange and statehood, later known as the methods of primitive accumulation that enabled not only the European capitalist accumulation and world domination but also the later development of capitalism and international legal order. What I am suggesting in here then is that Vitoria's system already contained the kernel of a capitalist international law. The strength of his theory of natural law and the law of nations lay precisely in its capacity to justify these necessary institutions of slavery, private property, commerce and kingship without compromising the ideals of natural law based on equality, freedom, liberty and common property.[14]

Even if much has changed ever since, I claim that these historical-structural connections of law with trade and capital still prevail and are not without a meaning. Based on what I have just presented, I do not believe that it is a coincidence that the president of the United States has negotiated a 28-point peace plan for Ukraine without consulting it. In addition to the extraction of its mineral and natural resources, this plan would force Kyiv limit the size of its military forces, not to join the NATO and to give up its territories to the Russian Federation, some of which are not even occupied yet. Consequently, 100 billion dollars of frozen Russian assets would be invested in rebuilding and investment purposes, and the United States would receive 50 per cent of the profits generated by this venture. Now, in his opinion published in the latest edition of the Foreign Affairs, the Finnish President *Alexander Stubb* expressed his concerns about the ongoing transformation of the existing world order.[15] The fact that the global regulatory system founded on liberal values and universal good is about to be replaced by the increasingly competing interests of utilitarian states. According to him, it was the "West's Last Chance" as the title indicates, "to Build a New Global Order Before It's Too Late". However, as I have tried to demonstrate today, the law of the strongest and wealthiest is already in force, in the very form of modern international law and states system. As Marx famously stated in his Capital, "[b]etween equal rights, force decides."[16]

Finally, a few words about the methodology of my thesis. Founded on the Marxist

13 On structures of capitalism, see Wood, Ellen, The Separation of the Economic and the Political in Capitalism. New Left Review 127/1981, p. 1-20.

14 See, e.g., Koskenniemi, Martti, Ius Gentium and the Birth of Modernity. In Luigi Nuzzo – Milos Vec (eds.), Constructing International Law: The Birth of a Discipline. Vittorio Klostermann 2012, p. 3-23.

15 Stubb, Alexander, The West's Last Chance: How to Build a New Global Order Before It's Too Late. Foreign Affairs, January/February 2026, published in December 2025.

16 Marx 1990, p. 344.

theory and critical legal studies, defining an appropriate research method is a challenging task. As it seems that any categorization would, by definition, contradict the very *ratio* of the chosen theory, limiting its intellectual enterprise. The reasons seem evident: what comes to the Marxist theory, Marx's main area of interest was the relations of production, the social organization of the means of life, not the conception of law.[17] Therefore, his (and *Engels*'s) discussion of law arises out of their general work. Moreover, rather than a simple theory, it is to be conceived as a guide for action, the necessity of social transformation culminating in the Communist Revolution. Nowadays, it is understood more as an emancipatory process in all fields. With respect to the critical law studies, continuing the tradition of leftist tendencies in modern legal thought, it has strongly criticized against formalism and objectivism.[18] As for critical legal scholars, legal reasoning is indeterminate and contradictory and, as such, incapable of resolving legal questions objectively.[19] As pointed out, however, critical legal studies is not a method but rather "an attitude" shared by a variety of legal scholars and practitioners representing diverse methodological approaches.[20] Therefore, methodological tools of critical legal studies must necessarily be searched outside the movement.

I believe that the multidisciplinary and historical approaches are the most suitable methods for my thesis. Even if this means the risk of not having adequate skills to "go beyond one's comfort zone" and, therefore, ending up "being a bad sociologist"[21] or an equally bad theologist, political scientist, historian or economist for that matter. For the thesis concentrates on the political and social changes that took place within a nation state for the sake of international trade and the capitalist transformation. It focuses on the economic, political, cultural and social context in which international law was to develop as well as the writings of early natural law theorists attempting to understand how this development was to affect the society at large. As such, the scope of the thesis goes well beyond the traditional legal and socio-legal research incorporating insights from many non-legal disciplines, including economics, history, ethics, politics, social sciences and philosophy. For as pointed out, rather than being an autonomous, law is heavily dependent on other normative orders in modern society – politics, ethics, religion, economy, etc.[22] Therefore, to produce empirically valid and theoretically sound legal research necessarily involves a wider perspective as well as adequate methodological instruments for that respect. At least what comes to this type of legal research.

Clearly, these chosen methods – the multidisciplinary and historical approach – pose considerable challenges relating to research integrity in general and those of reliability and accountability in particular. What comes to the former, the question arises whether I have been able of assessing, analysing and applying the research ideas, doctrines and conclusions presented in non-legal disciplines by non-lawyers in a manner that does not compromise the research integrity and the overall quality of my

17 Cain, Maureen, The Main Themes of Marx and Engels's Sociology of Law. British Journal of Law and Society 1/1974, p. 136-148, at 138.
18 Unger, Roberto Mangabeira, The Critical Legal Studies Movement. Harvard Law Review 96/1983, p. 561-675, at 564.
19 Arban, Erika, Interdisciplinary Approaches to Legal Research: Law and Economics and Critical Legal Studies from a North American Perspective, p. 1-17, at 14. Available at http://repository.uantwerpen.be (October 2025).
20 Lectures of Panu Minkkinen in the Doctoral Clinic in Vaasa, 8 April 2019. Notes on file with the author.
21 Lectures of Elina Pirjatanniemi in the Doctoral Clinic in Vaasa, 8 April 2019. Notes on file with the author.
22 Ibid.

research. Similar ethical concerns may also arise with respect to the latter: the fact that I analyse the critical moments in the development of international law within their wider historical contexts and through the texts of the natural law theorists written originally in Latin in the sixteenth century Spain. I leave this assessment to the reader.