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Research

Evaluating the Impact of Politicization, and the Commodification of Juridification, on Human Rights and Fundamental Freedoms

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Abstract: This research emphasizes the role of the government as an institution designed to uphold public trust and respect that the rights and liberties of the citizenry. However, that is an objective that is militated by corruption and the manipulation of symbolic power. Consequently, juridification plays a significant role in society, judging from the role of law as an instrument of legitimation. Thus, this research concludes that juridification can be a positive, or negative phenomenon. It is positive when utilized as an instrument for advancing and safeguarding human rights and liberties; while it is a negative phenomenon when applied as a tool for legitimizing violent or exploitative practices. Consequently, the legitimacy of laws are determined by their utility in advancing non-derogable standards of human rights law, and the individual right to autonomous action in society. So while law in the purest sense is an apolitical, normative, and substantive instrument/medium designed for the protection, recognition, and advancement of universal principles of human rights; the government is an institutional structure saddled with the procedural/administrative role of implementation the law through public policy or administrative actions. However the synergy between the normative and administrative role of the State is sabotaged when juridification is corruptly applied for nefarious or exploitative purposes that are antithetical to the rights and freedoms of the human person, as a beneficiary of an equal right to legal recognition, dignity, autonomy, freedom, and social as well as economic development. Thus, the question of the legitimacy of law and juridification must be answered in line with human rights law.

Keywords: Human Rights, Juridification, Neo-Liberalism, Exploitation, Violence.

1. Introduction

Juridification is centered on using law as a tool for achieving, or facilitating the fruition of public policy initiatives, which in the purest sense are based on legitimate

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objectives. However, observers who aren't naïve will recognize the reality of public sector corruption. Thus, understanding the possibility, as well as the historical fact that law has not only been utilized for the sake of justice and public interest; it has also been used for subversive or corrupt purposes: as a consequence of systemic corruption or institutional decay that causes governments to act contrary to the spirit of constitutionalism (Giovanni, 1962, p.853; Wando, 2022, p.23; Mbaku, 2016, p.681).

Typical examples of the abuse of juridification, include the application of law for 'authorizing the dispossession and extermination of Jews and other minorities, permitting arbitrary police search and seizure, condoning imprisonment, torture, and execution without public trial' (Weston, 1984, p.261). Thus, Nazi Germany and Fascist Italy are typical examples of such problematic practices, when law was used as a vehicle for pushing, supporting, and legitimizing the violent and imperialistic political ambitions of Fascist and Nazi regimes, in the course of the Second World War (Mussolini, 1932, p.2). So, Juridification becomes problematic when law is politicized; or applied as an instrument for legitimizing violence, or exploitation (Mara, 2005, p.1652; Weston, 1984, p.261).

In-line with the social contract theory, laws are legitimately utilized for maintaining public order, more specifically for the purpose of protecting, respecting, and facilitating the fulfilment of rights (David, 1891, p.656). However, politicization becomes problematic when the normative value of law is undermined by virtue of the political values of the ruling class (Mara, 2005, p. 1651). In proving this point, it is important to note that law, as well as human rights are dominantly normative (Peter, 2025, p.272; Gasiokwu, 2010, p.250). Hence, all political aspects of law are secondary and subject to normative considerations (Article 4, ICCPR). For instance, in terms of human rights, political rights are just one facet of the various categories of rights, which possesses civil, economic, social, and cultural aspects. On that account, the sphere of influence of politics, should be limited to the electoral rights that are relevant in the course of general elections.

Hence, normative issues must not be illegitimately politicized, otherwise it might procure an ethical crisis, when the 'process of juridification' alters 'the relation between the political and the legal realms' (Tosel, 2022, p.157). When the juridification process is a power-centric attempt to aggrandize the administrative authority of the State: the government tends to expand its sphere of influence to cover more aspects of civil, economic, social, and cultural life. Thereby, 'increasing the use of law' to a process of reification and bureaucratization of the 'social field which transforms law into an

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instrument in service of neo-liberal governance' (ibid; Kocka, 2018, p.75). The application of law, governance, and identity politics as tools for neoliberal cooptation, has also been recognized by Jorge Juan Rodríguez, in the context of the modus operandi of Western economies (Rodríguez, 2019, p.103).

2. Neo-liberal Cooptation of Sectionalized Factions for Political Purposes

There are various instances when identity politics has been utilized as a tool for securing 'representations in domains of power' (Rodríguez, 2019, p.103). Hilary Clinton, is a typical example of that phenomenon. As the Democratic Party, used her identity as a means of garnering the support of the electorate, and for correlatively aggrandizing the popular legitimacy of the Democratic Party. Irrespective of her alleged flaws and political questions surrounding her candidacy, a significant percentage of Americans supported and validated her presidential bid 'solely because she was a woman (a marker of identity)' (ibid; Jubis, 2016). Thus, the neoliberal cooptation of identity politics entails the cooptation of sectionalized loyalties, such as race and gender, as a means of obtaining electoral offices (Rodríguez, 2019, p.104). Solely for the purpose of garnering symbolic power, for the implementation of neoliberal policy objectives (Karl Marx, 1848, p.27).

Consequently, 'neoliberalism became hegemonic, by late-20th century it was able to co-opt identity politics, de-politicize its liberative ends, and make invisible its history and origins through institutions including, but not limited to, colleges and universities' (ibid). The origin of identity politics has been linked to the early 1930s (Rodríguez, 2019, p.105). The movement was further galvanized by the post-World War II human rights revolution. Hence, its 'campaigns fed into the vibrant Civil Rights Period of the 1950s and 60s' (ibid; Rehman, 2010, p.3). While advocating for the rights of discriminated groups, it's sensitization campaigns covered a wide range of issues including anti-lynching, and anti-colonialism campaigns targeted at the United States by Puerto Rican Independentistas, active opposition against 'systems of laws, policies, and beliefs that created inequity' (Rodríguez, 2019, p.105; Rehman, 2010, p.145). Figures like Martin Luther King Jr., Malcolm X, Dolores Huerta, Lolita Lebron, and others, are known advocates of civil rights and distributive justice (ibid). New waves of Feminism, new anti-racist, anti-sexist, liberation movements, were all integral to the progress and recognition of identity politics.

> Though all these movements since at least the 1930s dealt with issues of "identity," it wasn't until the late 1970s that the term "Identity Politics" emerged as an explicit analytic frame.' Finally, in April of 1977, the

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> Combahee River Collective issued a statement of their genesis, political vision, and analytical frame. In this statement "Identity Politics" was first coined as a validation of Black women's experience and tool for socio-political analysis […] 'Out of that identity came an anti-racist, anti-sexist, anti-capitalist, queer-inclusive vision of liberation for combatting oppressive systems.' This vision radically called for "the destruction of all the political-economic systems of capitalism and imperialism as well as patriarchy" (Rodríguez, 2019, p.106 - 108)

Although the issue of identity was an integral part of the movement in the 1930s, the concept of identity politics, only 'emerged as an explicit analytic frame' in the late 1970s (Rodríguez, 2019, p.106). Identity politics revolves around the nexus between race, gender, and class oppressions. Hence, it's true objective, is the creation of a levelled playing field, as captured by the 1977 statement of the Combahee River Collective that "To be recognized as human, levelly human, is enough" (Rodríguez, 2019, p.109; Peter, 2025, p.2). It was also related to the reproductive rights of women, and their right to choice, rather than them being told to "have babies for the nation" (Rodríguez, 2019, p.110). Thus, the crux of the identity politics initiative is the actualization of systemic equality, and correlatively 'undoing systems that create oppression—whether they be legal, social, or even theological' (Rodríguez, 2019, p.111; Rehman, 2010, p.3).

However, by virtue of its cooptation by neoliberalism, identity politics is now projected to enforce objectives that are antithetical to the original purpose of the movement. Hence, the impact of identity politics has been confined to the electoral sphere, as a tool of the political elite. Consequently, 'as opposed to challenging systems, identities have been wielded in contemporary discourse to enter systems of power' (ibid; Kocka, 2018, p.75). So rather than its real purpose of advancing social equality, it now plays a de-facto role in advancing the hegemonic influence of neo-liberalism.

> By virtue of diversity initiatives, 'flattened identities (e.g. Latinx, Black, Queer, Woman) are named to ensure "equal representation" in places of privilege. This phenomenon, mis-identified as Identity Politics, changes faces in power without challenging structures of power. This obvious departure from the original theorizations of the Black feminists is indicative of, I argue, the neoliberal co-optation of Identity Politics (Rodríguez, 2019, p.111).

Neoliberalism rose to prominence in 1938, 'as the proto-Civil Rights period germinated in the United States' (Rodríguez, 2019, p.112). An international group of liberal

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economists held a meeting in Paris (ibid). However, those economists did not welcome a collectivist approach to economics (Harvey, 2005, p.11). Hence, they were against the welfare State. Thus, they articulated an alternative approach to economics, and pushed the liberal ideology further. Emphasizing the duty of the State to liberalize trade and secure market-competition, as an organizing principle for the administration of the economy, in order for the market to function in its naturally unhindered form (Harvey, 2005, p.117). Since they adopted a different stance from that of the liberals that advocated for the welfare State, they adopted the title of neoliberals. Hence, the neoliberal ideology was a driving force for pervasive commercialization and commodification. Based on the assumption that –

> Nearly all (if not all) human activity is a form of economic calculation, and so can be assimilated to the master concepts of wealth, value, exchange, cost—and especially price [...] Within such a society, men and women need only follow their own self-interest and compete for scarce rewards (Rodríguez, 2019, p.113).

Hence, the trend of commoditization is not limited to property.

> This vision converted everything, including individual subjects, into prices and goods that could be exchanged in an economic market place protected by the state. Put differently, Hayek's conception was not merely about the economy but about how societies ought to operate. [...] Over the next decade, neoliberals continued meeting and developing these ideas. By 1947, the group formed the Mont Pérelin Society in Switzerland which sought to influence think-tanks that could fine tune their view, and "set about influencing public opinion" (Rehman, 2014: 272). They sought to change how people viewed and engaged the world. And they were quite successful (Rodríguez, 2019, p.114).

Thus, neo-liberalism is not solely an economic initiative, as its implications are far reaching. It is correlatively a socio-political ideology, aimed at engineering the perception of the public to embrace neoliberal values. On that account, 'they sought to change how people viewed and engage the world' (Rodríguez, 2019, p.114). According to Rehman, neoliberalism became the dominant ideology of the unipolar world order after the collapse of socialism in 1989, since he considered it as 'it's only "noteworthy competition" for organizing economics and society' (ibid; Steger & Roy, 2021, p.109).

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So neoliberalists spearheaded the advancement of an economic agenda, and a 'societal vison', created in its own image (Rodríguez, 2019, p.114). Consequently, it became more of a global, than a State-centric agenda, which Wacquant describes as a "transnational political project aiming to remake the nexus of market, state, and citizenship from above" (ibid). It has also been linked to the rise of a 'prison state', with a supporting penal system, legalistically designed to target those that violate the tenets of the neoliberal economic order (Rodríguez, 2019, p.114; Thomas, 2026). Therefore, one of the objectives of the neo-liberal agenda is securing the ascendency and legitimacy of political executives, and administrative actors empowered to push, enforce, and implement neoliberal public policies i.e.

> These logics include "economic deregulation, welfare state devolution, retraction, and recomposition [...] the cultural trope of individual responsibility [...] and an expansive, intrusive, and proactive penal apparatus" [...] As these logics infiltrate various societal sectors, Wacquant argues, humans are encouraged to pursue their "individual appetites" and participate in a civil society that stresses "self-reliance, commitment to paid work, and managerialism." [...] It pushed and pushes social norms and expectations in order to shape culture. Or, as Mary Wrenn writes, in neoliberalism "the economic sphere enlarges, eventually encompassing the entirety of social life, subordinating the other spheres of livelihood to support its purpose and further intensification" (Rodríguez, 2019, p.114).

The malignant commodification spearheaded by the neo-liberal agenda, is recognized by Karl Marx, and also corroborated by references to the 'moral deplorable' agenda of 'the reduction of human life to market value' which is proscribed as an ideology that 'merely breeds abuse and death' – that being a view that can be interpreted either literally or figuratively (Rodríguez, 2019, p.121; Karl Marx, 1848 p.15-16). Colonialism, resource-centric wars, and exploitative policies, are all examples of how pathological economic ideologies can procure negative ramifications (Peter, 2026, p.283-284).

It has also been argued that the neo-liberal agenda is capable of amorphous adaptation to systemic trends with the aim of cooptation of various spheres of influence, based on the primary aim of commodification (Brown, 1954, p. 25, 26, 35). Thus, the neoliberal ambition of systemic hegemony, is achieved on one hand: through the encouragement of ideologies that uphold its dominance, for example 'government bailouts of Wall Street'; while on the other hand, attempting to co-opt aspects of society that could

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be potentially disruptive, for example: religion and identity politics (Rodríguez, 2019, p.116). For instance in regard to religion, the neoliberal ideology is said to have permeated protestant circles, through mantras like 'God wants you to be rich' – thereby promoting the commodification of religion (Brown, 1954, p. 25, 26, 35).

As aforementioned, juridification is also a neoliberal strategy (Rodríguez, 2019, p.114). According to Natascia Tosel, 'symptoms of State transformations are diagnosed through a test of the relations between State and Law' (Tosel, 2022, p.159) Hence, a sign of juridification is 'a massive, excessive, even violent and unnecessary, use of juridical tools.' (ibid; Weston, 1984, p.261) Tosel argues that juridification is not ineluctably attached to depoliticization; instead it is a representation of a 'new kind of politics', which is either conservative, or associated with traditional representative politics, but more related to a legalistic attempt to expand the sphere of influence of State authority in relation to the citizenry (Tosel, 2022, p.159).

> From the origin of Modern State during the absolutism to the development of constitutional and democratic states in the XIV century, legal field of intervention constantly increased and expanded its boundaries [...] What is at stake here is an intensive and recursive use of law that intervenes to put its stamp on every kind of relations (social, political, economic) progressively increasing its level of specialization (Tosel, 2022, p.159 - 160).

Thus, the systemic 'phenomenon of "densification" and specialization of juridical tissues', is projected to produce disruptive ramifications in social and political areas of society (Tosel, 2022, p.161). "Juridification implies a bureaucratization and a monetarization of social bonds" (ibid; Karl Marx, 1848 p.15-16). The danger projected by observers, is the loss of autonomy over private spheres of influence, in which citizens were empowered to exercise their discretion and freedom of choice. However, through the process of juridification, autonomy and determination powers are surrendered to the 'naked arms of the bureaucratic and capitalist machine', which engineers society through the legalistic mechanism of the State (Tosel, 2022, p.161; Kocka, 2018, p.75).

On that account, all facets of the government are actively involved in the process, in-line with their constitutionally mandated functions, in the executive, legislative, and judicial arms of the State. Hence, juridification is "a paradoxical phenomenon" of depoliticization (in the context of limitation of individualistic choice), legalisation and judicialisation (ibid; Havey, 2006, p.147). Consequently, laws are "superimposed on

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communicatively structured areas of action. They give to these informally constituted domains of action a binding form backed by state sanction" (Tosel, 2022, p.161). In explaining the dynamics of juridification Habermas, made a distinction between law as a medium and law as an institution. Hence, concluding that 'law as a medium and law as an institution are like two sides of a rope: pulling to one side means necessarily losing ground on the other' (Tosel, 2022, p.162). Law as an institutions connotes its regulatory and protective value, in guaranteeing the exercise of rights, liberties, freedom of choice and individual autonomy, in an environment where public order is guaranteed; while, law as a medium is more directive, and centered on control, in enforcing specific modes of action, and sanctions for violators – 'in this way, law becomes responsible for operations of abstraction which freeze the vital and political nature of social relations' (ibid; Karl Marx, 1848 p.15-16)

> "Juridification does not merely mean proliferation of law; it signifies a process in which the interventionist […] state produces a new type of law, regulatory law" (Teubner, 1987, p. 18). In other words, law becomes an instrument at the service of neoliberal governance (Tosel, 2022, p.162 - 163).

The phenomenon of juridification can also be linked to Martinico's arguments, made in the context of identity politics and the militarization of constitutional law – when rather than focusing on the primary function of guaranteeing rights and the provision of an efficacious institutional structure or frame of government for facilitating development and the maintain public order 'populists in power use constitutional law to identify and fight the alleged enemy' (Martinico, 2024, p.2; Giovanni, 1962, p.853). Hence, denying such targeted groups the right to equal protection of the law, by catering to sectional loyalties or certain class of people, at the detriment of others. Thus, in such cases discrimination can be justified on the basis of fictitious or factitious narratives. Hence, 'public law becomes part of a constitutional narrative that represents the people as forged by a static identity that goes back to the mythological origin of the legal system', which "comes with (dubious) normative connotations" (Martinico, 2024, p.2; Mara, 2005, p.1651-1653).

What Martinico describes as 'identitarian public law' is usually construed in the context of legitimation arguments, which might be hinged on moral, historical, or religious justifications (ibid; Brown, 1954, p. 25, 26, 35). It is also obvious that economic, cultural, or socio-political arguments can be used to justify such policies, so long as it creates an

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efficacious narrative that verifies the legitimacy of the law or public policy in question (Martinico, 2024, p.2). That is the basis of the view that 'constituent power can be seen as a fiction with a normative claim' (ibid; Mara, 2005, p.1651-1653). There are various catch phrases that represent the dilemma of juridification, viz. the militarization of constitutional law; de-facto legitimation by the use of legal fictions; the use of 'eternity clauses' as a 'weapon of militant democracy' for averting change; the codification of the worldview of victors in the aftermath of conflict etc. (Martinico, 2024, p.3; Holmes, 1891, p.345).

The problem of juridification is a consequence of the fact that the jurisprudential efficacy of laws are undermined or sabotaged by corruption and fallibility. As noted by Martinico, laws 'are human creations and therefore fallible' (Martinico, 2024, p.4). So problems are bound to occur, when the State's legal sphere of influence is over-extended to a point of denying citizens the right to freedom of choice, which is a natural right; and the State is expected to avoid unjustified interferences with such rights. That is the basis of the argument of Sieyès, Dogliani, and others that natural law was "prior to the nation and above the nation" (Martinico, 2024, p.6; Gasiokwu, 2010, p.250).

> […] it protected personal liberty and property it had a beneficial effect on humanity. But the content of liberal democracy changed radically when it began to break the bonds that bind people to real life: when it questioned the identity of a person's sex, devalued people's religious identity, and deemed people's national affiliation superfluous. And the truth is that in Europe over the past twenty or thirty years this has become the spirit of the age (Martinico, 2024, p.14).

3. Politicization, 'Legalized Corruption' and Genocide

In regard to positivism, the Law might be politicized for the sake of nationalistic objectives, which nevertheless, can be based on legitimate reasons that justify the enactment of certain laws. However, politicization can also operate in a negative sense.

Alan and others have alluded to the ability of States to weave strategic interests into the legal framework of international law, for instance, the responsibility to protect via responding in 'cases of genocide and serious violations of human rights', is a reality (Alan, 2021, p.101). On that account, hegemonic States might utilized their symbolic power, as a tool for concocting legal fictions; and for justifying atrocities, by rationalizing them through the lens of legitimate objectives. For instance, France military presence in Rwanda, was justified on the basis of protecting French citizens, while it was rather based on the

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realpolitik of providing military support for militias and political allies, which eventually lead to the Rwandan genocide (FGT, p.3). Also, colonialism, which was centered on State capture, coercion, violence, and the exploitation of natural resources and human capital, was justified through the legitimate objective of civilizing Africa.

In the context of law, Matthew and Wando have categorized such deceptive practices under the typology of 'Legalized corruption', which occurs through the legalization of specific kinds of injustices that are regularized via legislation – for the sake of achieving associated political aims through manipulative strategies, disguised under the cloak of legitimate objectives that cloud the realpolitik of the issue (FGT, p.3).

In the context of the American genocide Cameron and Phan made reference to Raphael Lemkin's concept of genocide, which was proposed after the Second World War, capturing a wide range of destructive phenomena aimed at eradicating indigenous people (Cameron, 2018, p.26). Thereby, recognizing the "disintegration of the political and social institutions, of culture, language, national feelings, religion" and also "the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups" (ibid). On that account, Cameron and Phan, set out to prove the reality of the American Indian genocide in the light of the "strategies used by U.S. federal government to address America's "Indian problem," the federal government created a bureaucratic, State-sponsored system to destroy the essential foundations of American Indian life" (Cameron, 2018, p.26).

Among other ways, genocide can be executed through the implementation of policies aimed at "deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or part" (ibid; Weston, 1984, p.261). In-line with Lemkin's theory, physical violence is not an indispensable aspect of genocide. Thus, other non-physical measures and 'policy-driven actions' can be calculatedly executed, with the intent to bring about the destruction of native people (Cameron, 2018, p.27). Thus, the extermination process can be effectuated through dismantling religious affiliations, cultural identity, or the eradication of ideological factions, with the aim of putting an end to a targeted group (either in whole or in part). Gregory Staton, notes that 'genocide is not a single act nor is it linear' (ibid). It is a process that can be executed instantaneously or progressively.

> According to Stanton, the ten stages of genocide can happen simultaneously and "all stages continue to operate throughout the process". The ten stages

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> are classification, symbolization, discrimination, dehumanization, polarization, organization, preparation, persecution, extermination, and denial. Two stages are universally human qualities, classification and symbolization, and unto themselves do not result in genocide. However, both are necessary to perpetrate genocide, especially when coupled with discrimination and dehumanization. The act of classification divides people into 'us and them' by "ethnicity, race, religion, or nationality", while symbolization is applying words or symbols to set them apart (Cameron, 2018, p.27).

It is noteworthy to emphasize the position of Lemkin that 'genocide happens when' a section of society, or 'an ethnic group is divested of its cultural identity' (ibid). Thus, genocide possesses an anti-cultural dimension. Therefore, genocide can be described as the radical and large-scale annihilation of a targeted section of society. Through the implementation of policies that are primarily aimed at destruction. Stanton's ten ineluctable stages of genocide are essential to understanding the nature of its execution (Cameron, 2018, p.27). The first stage of classification involves the identification of a target group; the second stage of symbolism is centered on creating a narrative for justification, which can be centered on culture, economics, ideology or other considerations that will set the tone for the whole process, while garnering support and popular legitimacy amongst important allies (ibid). Hence, creating an enabling environment for subsequent stages, viz. 'discrimination, dehumanization, organization, preparation, persecution, extermination, and denial' (Cameron, 2018, p.27).

Staton also notes that the aforementioned stages of genocide are not mutually exclusive, as all or certain stages can occur simultaneously, or 'all stages continue to operate throughout the process' (ibid). The 'us and them' dimension of the classification stage can be based on ethnicity, religion, race, nationality, or any other sectionalized categorization (Cameron, 2018, p.27). It is also suggestible that genocide can be executed in regard to any group united by ideological or identity based connections, for persons that share a harmony of interest, and a correlative vested interest in the continued existence, or preservation of the group or communal values.

> Throughout U.S. history, the federal government characterized Native peoples as "them," ethnically and racially inferior to European settlers. Viewed as injuns, savages, barbarians, vermin, devil-worshippers, redskins, squaws, murderers, etc. (symbolization), Native peoples were regarded as an obstacle to the U.S.' growth, something to be eradicated […] The third stage

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> is discrimination. The "dominant group uses laws, custom, and political power to deny the rights to other groups," including the denial of fundamental civil rights, liberties, and citizenship. American Indians have an almost 240-year history of laws and political powers used to deny their basic human rights, including the right to citizenship until 1924. Over the course of U.S. history, the federal government has broken, modified, or nullified more than 500 treaties with Native peoples. Of all the treaties signed, not one remained honored as originally written. Dehumanization is the first step toward genocide. It denies the humanity of the group, weakening the normal repulsion against murder. (Cameron, 2018, p.27).

Thus, the manipulation of symbolic power comes into play, where the State uses various justifications to legitimize their actions (Mara, 2005, p.1651-1653). That can be achieved either through claims of upholding public order, efficiency considerations, necessary limitations for the achievement of long term objectives, a civilization process, executing evictions under the guise of town planning and urbanization initiatives, committing executions based on counter terrorism justifications, etc. Burns, has also categorized laws under the typology of legalized corruption, examples he gave includes 'the laws authorizing the dispossession and extermination of Jews and other minorities, the laws permitting arbitrary police search and seizure, the laws condoning imprisonment, torture, and execution without public trial' (Weston, 1984, p.261; Wando, 2022, p.23).

4. The Paradox of Deregulation and Juridification in the Context of No-Fault Divorce and Alimony

Alimony is a post-divorce, court ordered, mandatory payment, set to be made to dependent ex-spouses, by their former partners who aided them financially prior to divorce. Thus, extending the economic dependency beyond the marriage, either perpetually, or within a judicially determined timeframe, with legal sanctions for non-compliance, including incarceration, confiscation of licenses and passports, wage garnishment, court mandated withdrawals from bank accounts, seizure of property, imposition of interest for late payments, or other kinds of punishments for defaulting to uphold the court order (Thomas, 2026). Alimony is usually qualified by an existing financial asymmetry, between spouses that intend to divorce based on either a mutual or unilateral decision.

Jana Singer expressed her reservations on the practice of justifying 'post-divorce income sharing by relying primarily on economic efficiency grounds' (Jana, 1994, p.2423) Especially in the light of the disassociation of alimony from ethical justifications. It is important to take note of the deregulatory transition from the fault-based divorce system to

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the no-fault divorce system. Hence, transitioning from the era of juxtaposing divorce with the breach of marital obligations, and associating alimony with guaranteed pecuniary damages, for the breach of a 'state-imposed marriage contract' that attracts a tortious remedy (Jana, 1994, p.2424). Alternatively, the no-fault divorce system, appears to have replaced the moral element, with economic considerations, in the sense that alimony became more circumstantially determined, solely, on the basis of economic justifications; as opposed to ethical considerations, and in-line with the contemporary trend of 'the rejection of rigid gender roles' (Jana, 1994, p.2427). Nevertheless, specifically based on the argument of economic dependency.

Comparing the two systems, Jana claimed that 'while the fault-based divorce system emphasized the importance of preserving the family unit, the no-fault system focused on effectuating the desire of one or both spouses to end their marriage' (Jana, 1994, p.2425). No-fault divorce, marked the demise of the State-imposed marriage contract, aimed at preserving the union. In the 1970's and 1980's the post-human rights revolution ideology of the pedestalization of the human person, as the principal beneficiary of constitutional rights, also influenced the position of courts in proceedings related to divorce. Thereby, procuring the emphasis on 'decisional autonomy' (Jana, 1994, p.2427).

The arguments in favour of alimony are mainly hinged on economic considerations. For instance, the 'investments in human capital' made by the spouse that sacrifices career opportunities, in order to manage the affairs of the home i.e. accounting for the disadvantage of the spouse that specializes/invests in the household rather than the market (Jana, 1994, p.2429). 'Unequal earning capacities', which might be related to sacrifices made for the interest of children (Jana, 1994, p.2431). However, the argument that such guarantees encourage spouses to invest in marriages, is defeated by the fact that such incentives are equally capable of incentivizing divorce. Childcare arguments are also watered down by the contemporary practice of outsourcing childcare functions to paid caregivers.

The myth of equality that 'each spouse contributes equally to a marriage and is therefore entitled to share equally in its benefits and losses' is a legal fiction at best, if it is applied as a justification for mandating compulsory payment of alimony (Jana, 1994, p.2436). However, it is worth considering the potential productivity, justice, or jurisprudential value of such a legal fiction? For example the legal fiction of agency, which declares the principal and agent as one in terms of the agency is justified by the essentiality

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of that legal fiction for the proper administration of contracts in a manner that benefits third parties (Holmes, 1891, p.345). So what can be a jurisprudential justification for assuming that all spouses contributed equally to the marriage, when disparities in effort and investments are almost an inevitable aspect of marriage? Jana notes that "divorce law cannot remedy all of life's inequalities, and it is perfectly reasonable for such a couple to leave their marriages as unequally endowed as they entered it." (Jana, 1994, p.2444)

Carl alluded to transfer of moral agency, in terms of removing moral decisions from the sphere of influence of the law, and replacing it with interpretations that are determined based on free will, that being a state of affairs which he described as, American family laws 'diminution of the law's discourse in moral terms' and 'the transfer of moral decisions from the law to the people the law once regulated' (Carl, 1991, p.198). That being a phenomenon that epitomizes the de-prioritization of morality from the family law discourse, in favour of the value of freedom of choice.

Morality as a principle in terms of law, is often limited to public morality for the regulation of issues of public interest, as implied by the public order and morality principle stated in Article 4 of the ICCPR. However, there appear to be justifications for legislative abstinence from issues that seem exclusive to private spheres of influence based on the justification of autonomy and freedom of choice. That might also be the rationale behind statutes that juxtapose privacy, alongside the right to family life, i.e. the right to private and family life. However, such arguments have also been justified based on empirical considerations for instance, it 'relives the courts of the burden of moral discourse in deciding whether to award alimony' (Carl, 1991, p.198). Thus, it aids the development of a theory of alimony that is justifiable, based on other efficacious considerations that are devoid on moral claims. However, that approach has created problems, in regard to justifying alimony. Owing to the moral dimension of the marriage contract, as a life time undertaking, which traditionally affirmed spousal dependency as a foundational aspect of the union. Thus, a breach of the marriage contract justifiably attracts economic consequences (Carl, 1991, p.199). Hence, marriage was binding based on the moral value of the promises that spouses made to each other (ibid). Consequently, today, "no one can explain convincingly who should be eligible to receive alimony, even though it remains in almost every jurisdiction" (ibid).

Feminist based ideologies, on the issue of self-sufficiency, has also been the basis of advocacy for alimony reforms, for example the "Second Wives Club" being an association

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of women that were at least indirectly financially affected by payments made to prior spouses of their partners (Rachel, 2014, p.3). Hence, justifying their advocacy for its abrogation. Thus, their argument is that 'alimony recipients, who are primarily women, should advance feminism by being self-supporting without the assistance of a male, former spouse' (Rachel, 2014, p.4).

The pedestalization of economic considerations over morality seems tantamount to the commodification of the union, in transmogrification from a religio-social union to a seemingly exploitative economic change, considering that alimony orders can be perpetual and unconditional, in the sense that it even endures through subsequent marriages, where the economic conditions of the beneficiary of alimony might have change significantly. The economic/resource-centric approach is consistent with the neo-liberal ideology, and the prognosis of Karl Marx that –

> Wherever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations. It has pitilessly torn asunder the motley feudal ties that bound man to his "natural superiors", and has left remaining no other nexus between man and man than naked self-interest, than callous "cash payment" (Karl Marx, 1848 p.15-16).

Consequently, the service of the church and the nobility that dominated the pre-French revolution system of feudalism, has been supplanted by the capitalistic era of service to the exploitative and authoritarian dynamics of the neo-liberal economic system, through the legal dynamics of juridification and expansion of the sphere of influence of law in ways that progressively undermine financial freedom and autonomy (Karl Marx, 1848, p.14). As the ability of spouses to autonomously determine the terms of separation after divorce, is usurped by a legal system that determines the economic ramifications of divorce, and enforces compliance by a host of punitive measures including incarceration for failure to uphold economic obligations. Thereby, introducing the prison system to a relationship founded on solely social, contractual, and religious considerations. That is a reality that appears to be inconsistent with the tenets of the International Covenant on Civil and Political Rights, which in Article 11 declares that 'no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation'; as well as the right to individualistic self-determination in terms of financial autonomy, and the freedom of persons to make independent financial/economic choices, without the interference of the State.

5. Conclusion

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In-line with the social contract theory, public authority is meant to be exercised in good faith and in the interest of the citizenry, as the primary beneficiaries of public trust. On the contrary the hegemonic neo-liberal agenda, which has had a pervasive influence on public administrative systems especially in the Western world, has procured the prioritization of financial and economic values over the people. Hence, leading to the cooptation of public spheres of influence, including legal systems a tool in service of the neoliberal agenda. That being a state of affairs that can be deciphered from Tosel's analogy of the dichotomy between 'law as a medium and law as an institution' – thereby emphasizing the utilization of the law as a medium to serve the economic agenda of neoliberalism, through what she referred to as 'depoliticization' (Tosel, 2022, p.161).

It is important to note that depoliticization as applied in this research, especially from an economic frame of reference is not depoliticization in the politico-legal sense as a public administrative or Statist organizational principle, but depoliticization as a reference to the loss of the psychological value of freedom of choice of the independent man, as a political agent who is entitled to the freedom to interact in social settings as a politico-economic actor or agent in a society of the free and independent where 'people can become self-determined when their needs for competence' and 'autonomy are fulfilled' (Kendra Cherry, 2024). Thus, the loss of autonomy and agency for self-determination of the once free and independent man by virtue of juridicificon, is congruent with the claim that 'law becomes responsible for operations of abstraction which freeze the vital and political nature of social relations' (Tosel, 2022, p.162). Hence, this research explained the trend of juridification by using the Family Law system for example in Western countries that order mandatory alimony payments. Hence, usurping the freedom of choice of spouses to regulate their post-divorce economic affairs without State interference, also considering the harsh sanctions of imprisonment and other punitive measures for failure to comply, which is relatively incompatible with the position of Article 11 of the ICCPR, which proscribes imprisonment for contractual failures, considering that Marriage is a contract. Also considering the neoliberal undertone of alimony, as a means of commodification of social relations, State mandated transfer of resources, the imposition of a financial burden/obligation that coerces the debtor to partake in revenue generating endeavours, as well as the creation of more avenues for taxation for enriching the public treasury. Thus, explaining how the economic dimension of juridification leads to neo-liberalism.

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On the other hand politics in the orthodox legal sense of the right to self-determination, as embodied in Article 1 of the ICCPR and ICESCR, in regard to the sovereign mandate of the political executive, parliament or legislature to govern internal affairs through the force of law: is an attestation to the fact that States are also susceptible to the dangers of juridification when run by systemically corrupt elites who manipulatively apply their symbolic power for the legitimation of nefarious practices (Mara, 2005, p.1652). That is a reality which Cameron and Phan explained in the context of the American genocide, specifically in regard to the "strategies used by U.S. federal government to address America's "Indian problem," consequently, "the federal government created a bureaucratic, State-sponsored system to destroy the essential foundations of American Indian life" (Cameron, 2018, p.26). Also Burns Weston, gave further examples of the manipulation of symbolic power, via the application of law for achieving violent, unethical, or nefarious political aims, as epitomized in the laws 'authorizing the dispossession and extermination of Jews and other minorities, permitting arbitrary police search and seizure, condoning imprisonment, torture, and execution without public trial' etc. (Weston, 1984, p.261).

Hence, the commodification of the law, or in other words the application of law as a tool for catering to elitist economic interests possesses the tendency to procure neoliberalism; while the politicization of the law on the other hand possesses the potential of procuring fascism, and other related vices including systemic discrimination, denial of the right of legal recognition of victimized sections of society contrary to Article 6 of the UDHR, dispossession of property, violation of the right to life, disregard for legitimate administrative due process requirements, etc. Thus, in-line with the view of Tosel, neoliberalism is a probable consequence of abusive economic practices orchestrated by the ruling class (Tosel, 2022, p.161); while in-line with the position of Cameron and Phan, fascism is a probable outcome of extremist or unethical acts of politicization by the ruling class (Cameron, 2018, p.26).

Fascism is characterized by systemic discrimination, failure to recognize the legal rights of victimized sections of society, which serves as a basis for institutionalized orchestration of offences against humanity, property, and human dignity (Mussolini, 1932, p.2). As portrayed in the literature on fascism, there is a political, as well as an economic dimension of the vice, while the former is a product of politicization, the latter is a concomitant of exploitation (ibid); also as epitomized by the link between colonialism and

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fascism identified by Sam Vaknin, and criticisms against systemically discriminative and oppressive practices executed against indigenous people or targeted sections of society as captured in the Belgian Thesis, for example in 1957, Sir Alan Burns criticized the Soviet Union and American, for what he labeled "internal colonialism", also in regard to historical struggles endured by 'the Basques in Spain, the Palestinians in Israel, and Mexicans in the United in States' (Chávez, 2011, p.785; Jessica, 2017, p.538). Hence, emphasizing the importance of applying law, and executive authority, solely for legitimate purposes; while also identifying the dangers of corrupt application of juridification and the powers of the State.

In the purest sense, law is not a political instrument. It is rather predicated on universal standards, non-derogable principles, and peremptory norms that are equally applicable to all peoples, as a consequence of the common humanity of mankind. So the onus is on the State to uphold the garantiste component of constitutionalism by guaranteeing human rights and fundamental freedoms; as well as adhering to the tenets of the social contract by upholding public trust, and utilizing State authority for legitimate purposes that benefit society, as opposed to sectarian, exploitative or systemically discriminatory agenda. Thus, the purity of the law must be maintained, in contrast to "legalized corruption", when law is applied for destructive or exploitative purposes (Wando, 2022, p.23). Juridification is not a vice in itself, the problem is the abuse of juridification through improper or abusive exercise of legislative authority, as identified by Burns, Wando, and others (Weston, 1984, p.261; Wando, 2022, p.23). In light of the role of law as a tool for guaranteeing/safeguarding human rights and liberties – positive/pure juridification is a vector of freedom; while negative/corrupt juridification is a vector of violence or exploitation.

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