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A HISTORICAL VIEW ON THE EXPORT OF AMERICAN LAWS

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

AMERICAN LAW EXPORT: PHENOMENON AND DEFINITION

In addition to its political clout, economic strength, military reach, cultural pervasiveness, and scientific and technological advancement, American Law Export is also an important component of what constitutes America as a superpower.

American Law Export (ALE) can be defined as all the systematic and/or non-systematic arrangements made and actions conducted by governmental and non-governmental American legal bodies to protect or to maximize US legal subjects' benefits abroad in a predictable way by consciously helping or forcing the target subjects to know, to learn, to accept, to transplant, and to import from the US ideas, systems, practices, education, research, and culture in the field of law. In summary, ALE is the expansion or globalization of American law.

Many American forces have made contributions to ALE. They include but are not limited to the American government at the federal, state, and local level and the non-governmental forces, such as various interest groups, political parties, news media, public opinion, think-tanks, multinational corporations, chambers of commerce, military groups, financial capital, labor organizations, environmental protection and human rights organizations, religious groups, ethnic minorities, educational institutions, and individual Americans. Many methods and forms, such as the initiation or threat of war, economic sanctions, pressure, official negotiations, judicial practices, rules enactments, cultural diplomacy, educational exchanges, news

media, literature and art, missionary work, and volunteers abroad, have been employed to make the targeted countries, regions, jurisdictions, and international organizations actively or passively, voluntarily or forcibly, in whole or in part, understand, appreciate, study, agree to accept, import, and transplant American concepts, ideas, regimes, systems, practices, education, research, and culture related to law.

In fact, the US has the shortest history of law and jurisprudence among western powers. In the eyes of western jurists, American jurisprudence relied heavily on the development of law in Great Britain, France, and Germany before World War II. However, America quickly succeeded in establishing a leading position in law and jurisprudence in the world shortly after World War II. Since that time, many government officials have made frequent visits to the US, scholars and professors of judisprudence have become more willing to study, research and lecture at US universities and publish their articles in US law reviews, and young students have rushed to American law schools for degrees. Meanwhile, a large number of legal textbooks and sets of American law and court rulings have been introduced with or without translation (Zongling, 1995: 26).

Therefore, it seems necessary to conduct a historical overview on the export of American law before any in-depth research into ALE is attempted.

A STUDY OF DYNAMICS AND REASONS BEHIND THE EXPORT OF AMERICAN LAW

The Nature of the Expansion Behind American Law Export

The nature and motive behind ALE can be traced back to the Mayflower Compact in 1620.[1] Essentially, the Compact sets an invaluable precedent for the Constitution (Kennedy, 2006: 44), legitimizing the reasons for the expansion of the United States in the third section in Article IV (Okamoto, 2009). It is held in the Compact that 'In the Name of God … We … having undertaken … a Voyage … plant the first colony in the northern Parts of Virginia.' The authority

1. *The Mayflower Compact* <http://www.academicamerican.com/colonial/docs/Mayflower.htm> (access: July 28, 2012).

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

of the Word of God and his commandments included in the biblical canon, supported by biblical typology and unquestionable trust in the omnipresence and justice of the Almighty, transformed the territorial expansion into a Chistian duty. Its observance, first, created America and then extended American territorial jurisdiction and exported American law to new areas or states. In light of the philosophy underlying expansionism since the Mayflower Compact, and bearing in mind the legality of expansion according to US Constitution, it becomes clear why no limitations have been imposed upon colonization or law export. Needless to say, the same ideology provided the basis for American Exceptionalism and Manifest Destiny (Renhui, 2011).

American Exceptionalism and Manifest Destiny Theory: The Original Motive for US Law Export

It is widely acknowledged that the expansive nature of the US relates to Puritanism and its two derivative products, namely, American Exceptionalism and Manifest Destiny (Nayak and Malone, 2009).

The core and starting point of American Exceptionalism and Manifest Destiny can be summarized in one sentence: 'as a unique nation with a unique mission in human history, the United States of America has a unique role to play because of its uniqueness from, and superiority over, the rest of the world' (Ruyin, 2007: 437–38).

American Exceptionalism and Manifest Destiny originated from the idea of 'a city upon the hill,' a phrase famously used by John Winthrop in his influential sermon, 'A Model of Christian Charity,' delivered in 1630. After the Revolutionary War, American Exceptionalism was expressed in two schools of thought in the practice of American foreign policy: exemplary and missionary exceptionalism. The former stresses a good example for the rest of the world with major emphasis on the idea of the 'city upon the hill', isolationism, and anti-imperialism. The latter holds that the US is a country with a special mission to God and the world. Missionary exceptionalism has exerted a major influence on the shaping of US foreign policy through such notions as Manifest Destiny, imperialism, internationalism, the US as 'the leader of the free world', modernization theory, the new world order, and the like.

The main tenet of exemplary exceptionalism is that the US should become 'a city upon the hill.' American influence on other countries should be achieved by setting a good example rather than by way of interference. The first US President, George Washington, said in his farewell address that 'a free, enlightened, and at no distant period, a great nation' will give 'mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence.'[2] James Madison, the 'Father of the Constitution,' said: 'Our Country, if it does justice to itself, will be the workshop of liberty to the Civilized World, and do more than any other for the uncivilized.'[3]

According to missionary exceptionalism, it was obvious that US territory should be expanded from the Atlantic to the Pacific coast or across the entire North American continent. Together with the theory of Manifest Destiny, American territorial expansion and law export was in line with the principles of heaven, earth and the will of God, which was not only beneficial to the world but was also meant to be openly announced as His. Furthermore, the US democratic system was so perfect that there should be no national boundaries or restrictions on its expansion. Therefore, US territorial expansion and law export were construed not as an imperial invasion but as a forceful salvation and an act of enlightenment designed to save its neighboring peoples from tyrannical rule (Billington and Ridge, 1982: 513).

With the growth of US economic strength and military power, missionary exceptionalism began to achieve a dominant position (Ruyin, 2007: 439). All US decision-makers seemed to share a common wish that the US would be the world's 'New Jerusalem' stretching from Washington's 'sacred fire' to Jefferson's 'democratic ideals' and from Wilson's 'Fourteen Points' to Roosevelt's 'four freedoms'. Americans have made continuous efforts to set an example of freedom and democracy to the world so that the US democratic system can replace the so-called 'autocratic, dictatorial, decaying, and corruptive' governments (Xiuli, 2007: 57). They hold that the American mission of emancipating the earth from tyr-

2. 'Washington's Farewell Address 1796,' <http://avalon.law.yale.edu/18th_century/washing.asp> (accessed: September 8, 2009)
3. 'The Republican Form of Government.' <http://www.libertyparkusafd.org/lp/quotes.htm> (accessed: September 11, 2009)

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

anny through the US democratic system is a secular expression of rescuing the world from Satan (Cabriel, 1997: 4). To achieve this, it is both inevitable and necessary to export American law to the rest of the world.

The Comparative Advantage for American Law Export: The Unique Geographic Environment and the Diversity and the Innovation of US Legal Civilization

There are three major reasons for the success of ALE: the unique geographic environment of America, the diversity of the American legal civilization and its innovative character.

The first factor, the uniqueness of the geographical environment, translates into the fact that it was very lucky for those Americans who believed in American Exceptionalism and Manifest Destiny that their neighbors, such as the Native Americans, were weaker and less modernized than the white majority, and that the continent was beyond the 'good and effective control' of the European powers. Thus, they could rapaciously entice and force Native Americans to make concessions to American territorial jurisdiction. In the face of the European law export, what the US needed to do was simply announce that the US territory was destined to encompass the whole continent of North America, or, unilaterally, issue the Monroe Doctrine to preclude European law export.

The second factor is the diversity of US legal civilization. It is common knowledge that many people have rushed to America from every corner of the world throughout the history of US territorial expansion and immigration since the colonial period, bringing in their own laws (Friedman, 1973: 15). Their legal backgrounds include the common law, the continental law, the Islamic law system, the traditional Chinese legal family, and other legal systems. All these immigrants make US law full of vigor because of its diversification, which, in turn, facilitates the development and export of American law.

The third element is the innovative character of the legal civilization of the US. Yujun comments upon it as follows:

> Compared with their world-wide counterparts, Americans show more innovation/competitiveness, and alternativeness in the thought of law

> ... Many schools of thoughts and jurists exist side by side. No school of jurisprudence could win unanimous recognition and it is very difficult to establish a dominant legal tradition on the basis of sublimating disagreements and absorbing all schools. Many schools of thoughts and jurists ... appear on the stage one after another ... Each school may be alternatively unrivalled for a certain period and no one can dominate the stage for ever ... All these puzzle the external observer and make US jurisprudence ever moving and prosperous without mummification and stagnancy which leads to [a number of] Uncertainties, namely, the uncertainties of positions, values, methods, applications, and evaluation criteria (Yujun, 2007:125).

In fact, the 'Uncertainties' are just an expression of the innovation and contention of US law that jointly provide the American legal pool with sufficient support. Such legal reserve makes it possible for Americans to cope with any 'legal emergency and contingency.'

In general, the position of American Exceptionalism and Manifest Destiny in US culture, the uniqueness of the geographical environment, and the diversity and innovativeness of mutually complementary, yet contending elements of the legal civilization of the United States, should be considered the most important elements in the process of diagnosing the comparative advantages of the US over its competitors in terms of ideas, systems, practices, education, research, and culture in the fields of law. The US can still exploit these comparative advantages by using (or choosing not to use) its superpower status to export its law across the world.

A HISTORICAL VIEW ON THE PHASIC EXPORT OF AMERICAN LAW

The First Phase (1776–1897): Offensiveness and Defensiveness with Territorial Jurisdiction Expansion as its Major Object

Territorial expansion is conducive to ALE because it means the expansion of jurisdiction in geographical terms. As a relatively small power during this period, the US did not have the same strength as did the continent European powers to launch as 'global' attempts at expansion, which made the civil law system more central than common law. Therefore, the US adopted a foreign policy of offensiveness and defensiveness with the expansion of territorial jurisdiction as its major object. On the North American continent, the US offensively focused on expansion to extend

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

its territorial jurisdiction. In South America, the US defensively announced the Monroe Doctrine to exclude the possible impact of the European powers, thereby establishing its sphere of influence. In the Asian-Pacific region and particularly in China, America followed the policy of Metooism to grab the consular jurisdiction and unilateral MFN treatment, which expanded American territorial and personal jurisdiction while impairing China's legislative, administrative, and jurisdictional sovereignty (Deane, 2003: 177).

In North America, territorial expansion was the first effort to directly and permanently enlarge territorial jurisdiction to maximize US legal subjects' benefits. In fact, when its independence was recognized by Britain in 1783, the US was a small country whose area covered approximately 800,000 square miles.[4] The lack of land and national strength, the urgency to develop domestic economy, the need to settle contradictions and resolve the conflict of interests between the North and the South, and the threat of European envy and Native American attacks all compelled the US to adopt a foreign policy based on a strategy that was defensive if compared to the strategies of the European powers. Bearing American Exceptionalism and Manifest Destiny in mind, the American Founding Fathers began to fulfill their original plans. The ensuing division of America into slave and non-slave states led to further competitive efforts between the North and the South to acquire territory in the Caribbean and in Central America (Papp, 2005: 84). Therefore, the US soon embarked on the road of territorial expansion to directly extend American territorial jurisdiction making clear that '… for a century to come, the subduing of the temperate regions of North America to the purposes of civilized life was to be the main business of the United States.'[5]

Without considering the idea that the Native Americans were also equally created before the law, George Washington alleged that they were just 'beasts of prey, tho' they differ in shape … There

4. *The Making of The United States* <http://www.globalpolicy.org/empire/us-westward-expansion/25946.html> (accessed: September 16, 2009).
5. Samuel Eliot Morison, Full text of *The Growth of The American Republic Volume One*. <http://www.archive.org/stream/growthoftheameri007597mbp/growthoftheameri007597mbp_djvu.txt> (accessed: September 4, 2009).

is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expense.'[6]

Subsequent US leaders followed suit. The second US President, John Adams, said on November 22nd, 1797, that 'to prevent Indian hostilities, and to preserve entire their attachment to the United States, it is my duty to observe that to give a better effect to these measures and to obviate the consequences of a repetition of such practices, a law providing adequate punishment for such offenses may be necessary.'[7] Thus, the US government officially announced that Native American human rights, according to natural law, would not be taken into consideration in the context of the country's territorial expansion and that no limitations would apply to the actions of the administration, or the means, by which the goals were to be attained. In 1811, Adams went even further by announcing that America was 'destined' to spread over the whole continent.[8]

The third US President, Thomas Jefferson, was more ambitious than his predecessors: 'Our confederacy,' he stated in his letter to Archibald Stuart Paris, 'must be viewed as the nest from which all America, North & South is to be peopled.'[9] In face of Native American resistance to his predecessors' extreme policies and actions, he nonetheless adopted a 'soft' policy that made US actions regarding Native Americans seem more neutral. On February 27, 1803, he made his policy clear: 'we shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands.'[10] If Native Americans refuse to cooperate, he announced on October 17, 1803, it would 'be nec-

6. Letter of George Washington to James Duane, 7 September 1783. <http://teachingamericanhistory.org/library/index.asp?document=359> (access: September 5, 2009).
7. 'First Annual Message of John Adams.' <http://avalon.law.yale.edu/18th_century/adamsme1.asp> (access: September 5, 2009).
8. 'Manifest Destiny in Association with Gatlinburg Cabin Rentals.' <http://www.lonympics.co.uk/usexpansion.htm> (access: September 5, 2009).
9. *The Letters of Thomas Jefferson: 1743–1826*. <http://www.let.rug.nl/usa/P/tj3/writings/brf/jefl42.htm> (access: March 18, 2012).
10. To Governor William H. Harrison. 1803. <http://odur.let.rug.nl/~usa/P/tj3/writings/brf/jefl151.htm> (access: September 5, 2009.)

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

essary for the immediate occupation and temporary government of the country; for its incorporation into our Union; for rendering the change of government a blessing to our newly-adopted brethren; for securing to them the rights of conscience and of property: for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them, and for ascertaining the geography of the country acquired.'[11] Later, however, Jefferson wrote of the remaining Native Americans that the government was obliged 'to pursue them to extermination, or drive them to new seats beyond our reach.'[12]

In his address to Congress on December 2, 1823, President James Monroe articulated the United States' policy on the new political order developing in other regions of the Americas and on the role of Europe in the Western Hemisphere'[13] by announcing 'that the American continents…are henceforth not to be considered as subjects for future colonization by any European powers.'[14] Monroe outlined two separate spheres of influence: American and European. The independent lands of the Western Hemisphere would be solely the United States' domain. In exchange, the US pledged to avoid involvement in the political affairs of Europe such as the ongoing Greek struggle for independence from the Ottoman Empire, and not to interfere in the existing European colonies already in the Americas.[15]

Yet, not satisfied with the US interest zone being limited to the Western Hemisphere, Americans turned their eyes to distant Asia. As early as July 3rd, 1844, the US forced the Qing government to sign the Sino-US Treaty of Wang Hiya (Wangxia), which granted the US many privileges, including the right to veto any Chinese governmental modification of the tariff, unilateral MFN treatment, unilateral consular jurisdiction, privileges in the areas of the Chinese

11. Thomas Jefferson, 'Third Annual Message to Congress. 1803.' <http://avalon.law.yale.edu/19th_century/jeffmes3.asp> (access: September 5, 2009)
12. Thomas Jefferson, *The Letters of Thomas Jefferson: 1743–1826* ('A HEMISPHERE TO ITSELF') <http://www.let.rug.nl/usa/P/tj3/writings/brf/jefl224.htm> (access: March 17, 2012).
13. The Monroe Doctrine, December 2nd, 1823. <http://www.state.gov/r/pa/ho/time/jd/16321.htm> (access: September 6, 2009).
14. The Monroe Doctrine, 1823.
15. The Monroe Doctrine, 1823.

territorial sea and inland waters, the right to treaty revision in 12 years, and other advantages.

To sum up, American law export during this period affected predominantly the North American continent. Its spread was related to the offensive westward movement aimed to permanently expand US territorial and personal jurisdiction. While implementing its defensive Monroe Doctrine, the US administration began to look toward Latin America with view to its inclusion into the US sphere of influence. It also followed the policy of Metooism to seize privileges and expand its interests in China. This period, likewise, saw the birth of an independent ALE policy, beginning with Commodore Perry's opening of Japan in 1853 and 1854, and expanding with the idea shared by Perry and by a medical missionary Peter Parker, that Japan could be reduced to a subordinate American ally, and that Okinawa and Formosa (China's Taiwan) could be seized (Deane, 2003: 177).

The Second Phase (1898–1940): Efforts at the Establishment of an American World Legal Order

The turning points of this period are as follows: a) the US engagement with Spain to challenge the European-dominated world order by force, and the issuance of the Open Door Policy to induce European powers' concession of interests in the area of the economy, and b) the proclamation of the Fourteen Points in the hope of securing a US leadership position in the world by way of the International League of Nations.

At the end of the first phase, the US became a major power in the world, with the third largest territory, the most industrially developed economy, the most diversified culture and civilization, the most stable political and democratic system, the most numerous interest groups, and the most sophisticated economic law. After more than 100 years, the US saw its own mature and independent development in all fields of law (Grossberg, 2008: 1). In addition to being continuously fueled by the ideologies of American Exceptionalism and Manifest Destiny, ALE gained even more powerful advantages in terms of its material basis, spiritual motivation, and intellectual reserve. Therefore, the US not only had ambitions

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

in furthering ALE, but also saw it as a mission. Exemplary exceptionalism was thus transformed into missionary exceptionalism: the US mission to prevent neighboring peoples from being tyranically ruled (Billington and Ridge, 1982: 513).

Spain, the weakest player in the European political arena despite its extensive colonies, became the first victim of America's challenge to the European-dominated world order. The US officially declared war against Spain on April 25th on the pretext of the battleship *Maine* incident on February 15th, 1898 (Renhui, 2011). Spain was defeated. Cuba, Guam, the Philippines, and Puerto Rico became American colonies, the transformation of which effectively expanded American territorial jurisdiction and resulted in the invalidation of any European-dominated international legal orders in those regions. The seizure of those regions and gaining control of Hawaii not only consolidated the American sphere of influence in the Western Hemisphere, but also provided the US with a springboard to the Asian-Pacific region for its law export and the expansion of its interests on a larger scale, with the view to re-structuring the international political, economic and legal order world-wide.

American face-to-face competition with all European powers began in China with the implementation of the Open Door Policy in 1899:

> [The US Secretary of State, John Hay] proposed a free, open market and equal trading opportunity for merchants of all nationalities operating in China, based in part on the most favored nation clauses already established in the Treaties of Wangxia and Tianjin. Hay argued that establishing equal access to commerce would benefit American traders and the US economy, and hoped that the Open Door would also prevent disputes between the powers operating in China. For the United States, which held relatively little political clout and no territory in China, the principal of non-discrimination in commercial activity was particularly important. Hay called for each of the powers active in China to do away with economic advantages for their own citizens within their spheres of influence, and also suggested that the Chinese tariffs apply universally and be collected by the Chinese themselves. Although the other powers may not have agreed fully with these ideas, none openly opposed them.[16]

16. 'Secretary of State John Hay and the Open Door in China, 1899–1900.' <http://www.state.gov/r/pa/ho/time/ip/17457.htm> (accessed: September 8th, 2009)

The Open Door, effectively, would grant Americans equal access to commerce in China. On July 3, 1900, Hay circulated another message to the European powers involved in China, emphasizing the importance of respecting the 'territorial and administrative integrity' of China with the intention of preventing the European powers from using the Boxer Rebellion as an excuse to carve China into individual colonies.[17] In terms of law, it meant that, individually or as a whole, no European powers' privileges granted by unfair treaties should prevail over the privileges of the US. This marked a major step in American foreign policy toward China: the ending of Metooism and the implementation of an independent formula (beginning with the Open Door Policy) in the hope of guaranteeing the US comparative advantages over European powers on the basis of America's economic strength.

World War I seriously weakened Europe and markedly strengthened the US.[18] Watching the war between the European powers, President Wilson put forward the Fourteen Points declaration on January 8th, 1918, before America became involved in the war. It was the first program attempting to grant the US equal, and increasingly greater, influence on a new institutionalized political, economic, and legal world order, with the US eventually emerging as the world leader (Ikenberry, 2000: 4). To that end, Wilson planned to establish a universal international organization based upon an open world-wide market with national self-determination and free trade as prerequisites, yet avoiding the rhetoric of direct colonial rule. It was undoubtedly a reform and improvement of the traditional European-dominated order. Its implication was that the market regime would begin to replace military factors with respect to world dominance, which was in line with the developmental trends of world-wide economic, political, and legal systems, and in the best interests of the US (Wenwei, 2003: 44–46). Boasting an advanced legal system in coordination with the strongest economy in the world at that time, the US could, in a peaceful way, utilize legalized and institutionalized systems

17. 'Secretary of State John Hay and the Open Door in China, 1899–1900.' <http://www.state.gov/r/pa/ho/time/ip/17457.htm> (accessed: September 8th, 2009)
18. 'World War I' <http://www.is.wayne.edu/mnissani/WWI/encarta.htm> (accessed: July 29, 2012)

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

to expand US interests globally, including ALE. Therefore, the establishment of international organizations to strengthen and enforce the American vision of international political and economic legal system has begotten continual efforts to address international relations, foreign exchanges and ALE. This was the beginning of the systematic American law export (Renhui, 2010). However, America did not join the League of Nations because of domestic isolationism, and because some Americans held that the security policy of the 1920s should rely on banks rather than tanks (Braumoeller).

In fact, the US did not follow a policy of absolute isolationism before and immediately after World War I. In Latin America, President Franklin Roosevelt, who, at that time, worked for the Department of the Navy under Wilson, offers an interesting example. After the US invasion of Haiti in 1915 resulting in the death of thousands of Haitians, Roosevelt became the author of Haiti's new constitution and bragged that he worked in a major change in the country's political system. The Haitian constitution had originally forbidden foreign land ownership to eliminate the potential threat of the return of the white-owned plantation culture. Roosevelt did away with it, paving the way for Haiti to become an American neocolonial asset.[19] The Roosevelt-written Haitian constitution may have served as a precedent for the US transformation of legal systems in Japan, Germany, and other countries after World War II. In Europe, US banks lent Germany money to enable it to meet its reparation payments to countries such as France and the UK, who, in turn, used the reparation payments from Germany to service their war debts to the US. Coming so soon after the American rejection of the Treaty of Versailles and the League of Nations, the Dawes and Young Plans were significant instances of US re-engagement with European affairs. The Young Plan has clearly proven to have had a more lasting effect: the Bank for International Settlements, or BIS, continues to operate to this day as a forum for central banks in consultation and cooperation.[20] Therefore, it is possible

19. *The American Empire* <http://ahealedplanet.net/america.htm> (accessed: September 8, 2009).

20. 'The Dawes Plan, the Young Plan, German Reparations, and Inter-allied War Debts.' <http://www.state.gov/r/pa/ho/time/id/100933.htm> (ac-

to claim that it is then that the US began to establish its leading position in international financial law. In the Asian-Pacific region, the US won two victories: one was the recognition—and internationalization—of the Open Door Policy in China, as confirmed by the Nine-Power Treaty of 6 February 1922. The other one was the legalization of American fleets as equal to Britain's and second to none, pursuant to the Washington Treaty for Naval Disarmament. Bearing these developments in mind, one may argue that, in fact, they may mark the beginning of American leadership in international economic and military law.

The Third Phase (1941–1991): The American Global Legal Order

This period is characterized by: a) the forceful transformation, transplantation, and rebuilding of the legal systems in Japan, West Germany, and Italy to export American law to those regions after military occupation; b) the centrality of the Nuremberg and Tokyo War Crimes Trials as turning points in the process of the exportation of American law at an international level; c) the establishment and utilization of the UN to formulate a public international legal system; d) the founding and the entitlement of the *de facto* veto in GATT, the IMF, and the World Bank to spread and strengthen an international economic legal system beneficial to the US, and e) the export of American law to socialist countries in the hope of establishing legal systems similar to their American counterparts.

World War II gave the US a good opportunity to establish an American legal order world-wide. At this point, the US had reached the peak of its comprehensive national strength, its government was confident of its world leadership, isolationism was on the decline, domestic resistance to the establishment of world hegemony was unchallenged, and President Franklin Roosevelt had his insight and foresight confirmed (Honghua, 2006: 19).

The Lend Lease Act and the 'Arsenal of Democracy' are meaningful symbols of the orientation of Roosevelt's economic and military preparations to reshape the world. The 'four freedoms' (freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear) were Roosevelt's political and legal blue-

cessed: September 8, 2009).

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

print for the world: the President held that it was American destiny to support the 'four freedoms' world-wide.[21] The development of the so-called 'Anglo-American special relationship' meant, in fact, the British recognition of American leadership, that was later reaffirmed in the Atlantic Charter, which laid the foundations for the Charter of the United Nations. When Britain, formerly the strongest European power, agreed to lend its military and naval bases to America to support the 'four freedoms,' the US, arguably, began to replace Britain in its role as the shaper of the international legal system. When the Declaration by the United Nations approved and upheld Roosevelt's 'four freedoms' at an international level, the time was ripe for the US to formulate an international legal system and finally attain the globalization of American law.

The founding and operations of the UN have established a set of public international laws in line with US standards on a global scale. With its veto right in the UN Security Council, the US can veto any other member state's objection to its illegal unilateral actions and deny the legitimacy of its adversary's unilateral actions at the same time. Therefore, the US can take multilateral actions under the UN banner and pursue unilateralism outside the UN to boycott, to sanction, and to attack those regimes who dare to challenge the US-dominated international legal system.

In terms of international economic law, the US successfully established the Bretton Woods system with the IMF, with the World Bank and GATT as its major pillars, thus effectively implementing a new international legal system in the field of finance and trade. Though the Bretton Woods system collapsed in the 1970s, the US had become the most powerful decision-maker and rule-designer in international trading and financial legal systems. Therefore, the US could and did demand many concessions from—and exported American law to—those countries that wanted to have access to international organizations and the world market. These demands

21. More comments on the significance of the Four Freedoms in the history of American law export can be seen in: 'Far from Crisis: a Perspective of American Law Export Returns in the Fields of International Economics,' (authored by Yuan Renhui, paper for American Studies Network Annual Conference 2010).

resulted in the import of American law into these countries, particularly in the fields of foreign trade and finance.

Take GATT for example: eight rounds of GATT multilateral trade negotiations were all launched with the US as the leading force. Nearly each round of negotiation proceeded in accordance with American proposals and rules. The US may have decided the negotiation agenda, including what to negotiate and what not to address. It may have also been an abortive negotiation because of American intransigence. Yet, it was the US that had the last word in the shaping of the final outcome of the negotiations. In accordance with the US national interests, only those trade rules and principles that were signed and ratified by the US could acquire legitimacy and become common rules to be abided by and enforced by all member economies. The multilateral trade negotiations had become a complex multi-level and strategic game supporting the interests of America, whereas most nations had little influence upon the shaping of their international economic relations or the formulation of international trade rules (Jianxin, 2006: 7–8). In this way, the US could actually control the development of the international economy and trade in terms of the legal system regulating them, which created a context conducive to American law exportation.

The US did more than offer a 'carrot': the 'stick' was also at hand. A variety of military organizations, alliances and security mechanisms came into being under US guidance, which served as the last means to back the US-dominated international public, economic, financial, and trade legal system in an attempt to safeguard the position of the US as the rule-maker and arbitrator.

Another factor that should be taken into account is the formation of the socialist camp. The post World War II US had a mission different from that of the pre-War period: the export of American law to socialist countries. The Cold War brought military confrontations, boycotts, and embargos, all occurring alternatively or simultaneously. International economic, financial, and trade organizations, regimes, and systems were also employed to minimize the influence of socialist states. Even though cultural export and educational exchanges were carried out in the hope of a peaceful evolution of international relations over several generations, the US, meanwhile, took every opportunity to export its market economic regimes, systems,

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

and laws to socialist countries, particularly in the course of their application for entry into GATT.

China was an example in this regard. As of 1982 when China applied for GATT signatory member status, the US had raised more than 40,000 questions on China's foreign trade regime, which may be summarized in two inquiries: a) whether or not China would promise to establish a market economic regime, and b) if yes, to what concrete extent might other economies have access to China's market. At that time, the market economic regime was unconstitutional in China due to worldwide misunderstanding of the relationship between the market economy and socialism. However, this case may be evidence for ALE.

Another aspect of ALE, characteristic for the period, may be labeled as the US striving for hegemony with the USSR. In the 1960s and 1970s, the US Agency for International Development, the Ford Foundation, and other private American donors underwrote an ambitious effort to reform the judicial systems and substantive laws of countries in Asia, Africa, and Latin America. This law and development movement engaged professors from Harvard, Yale, Stanford, Wisconsin, and other leading American law schools and generated hundreds of reports on the contribution of law reform to economic development within a few years.[22] The developments in these areas had proven conducive to ALE and, to a certain extent, the modernization of law of countries involved may be perceived as a result.

The Fourth Phase (1992–present): A New Period of the American Global Legal Order

This period brings: a) the decrease in resistance to the export of US economic laws, which, to some extent, is a result of the collapse of the USSR, the drastic changes in Eastern European countries, the founding of—and China's accession to—the WTO, and the widespread acceptance of the market economic regime; b) more efforts on ALE in the fields of international economic, financial, and trade law; c) new emphasis on ALE in the sphere of human rights, labor standards, sanitary and phytosanitary measures, environmental

22. 'Law and Development Movement.' <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement.pdf>. (access: September 11, 2009).

protection, and intellectual property rights; d) frequent forceful ALE related to transformations imposed upon the so-called rogue states' legal system; e) the increasingly important role in ALE played by American non-governmental organizations, such as multinational corporations, universities, and news media.

After the Cold War, the US paid more attention to the export of American economic and trade law. Since the foundation of the WTO, America has proven to have become the top player in the international arena of legal regulations as a result of the ensuing expansion of the US-shaped jurisdiction from the area of pure trade within GATT to investment, and then to that of IP, and possibly to labor standards, sanitary and phytosanitary measures, and environmental protection (Chunlin, 2007: 205). To substantiate this claim, it is enough to point to the fact that it was the Americans who raised most of the topics in the Uruguay Round negotiations and designed the majority of norms and rules, some of which were borrowed directly from US law, with minor adjustments only. With such an orientation of the US legal philosophy, it comes as no surprise that many American jurists and lawyers are more familiar with the WTO law than with the laws of their individual international partners, and the potential for conflict between the US and WTO law has been minimized. It may be safe to say that the laws of the WTO have entirely satisfied the US interests, particularly in relation to the Americans' special interest in the newly established GATS and TRIPs (Jianxin, 2006: 275). Owing to the WTO and other international economic organizations, the US has gained a safe vehicle to export its law, with non-economic law as a tie-in.

The expansion of international economic organizations and economic liberalization require the globalization of law firms, including American law firms, which further promotes the Americanization of target jurisdictions. Japan is an example in this regard. The Japanese legal style became Americanized in a number of significant respects in the 1990s. The Americanization of Japanese law involves more transparency, disclosure, codification of administrative procedures and adversarial legal contestation ranging from administrative procedures to the regulation of non-profit organizations and from securities regulation to product liability (Kelemen and Sibbitt, 2002: 269).

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

Meanwhile, the US often takes a variety of measures against countries in violation of the American version of international law in order to achieve its own political and diplomatic goals. The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton Act) is a notorious example.

Furthermore, the US often resorts to its unilateral legislation prerogatives, as substantiated by, for instance, Section 301 of the 1974 Trade Act. It exercises long-arm jurisdiction and cross-border jurisdiction (transient jurisdiction), and calls upon the principles of foreign sovereign immunity to expand its extraterritorial jurisdiction, as has been the case with the Helms-Burton Act, intended to bind third states' nationals in their trade with Cuba.

Finally, the US has never given up forceful means to export American law when necessary. As the sole remaining superpower, the US tends to use, or threaten to use, force, from time to time to export its laws to the so-called rogue states by way of overthrowing their governments and establishing new legal systems that are in line with American interests. The case of Iraq provides the best illustrative example of this strategy.

In general, however, the US of today prefers to export its law by means of trade, cultural assistance, and educational exchange as a tie-in. Kent Wiedemann, the US Deputy Assistant Secretary of State for East Asian and Pacific Affairs, commented on this before the Senate Foreign Relations Committee Subcommittee on East Asian and Pacific Affairs, on July 25th, 1995:[23]

> Trade is not just a means of producing wealth, but is also a conduit through which US concepts and ideals filter into the consciousness of all Chinese. In the long run, opening markets for America's idea industries—movies, CDs, software, television—and for products that make international communications easier—such as fax machines and computers that are linked to the Internet—may contribute as much to the improvement of human rights in China as all of our direct, government-to-government efforts combined.[24]

23. Testimony by Kent Wiedemann, US Deputy Assistant Secretary of State for East Asian and Pacific Affairs, before Senate Foreign Relations Committee Subcommittee on East Asian and Pacific Affairs, July 25, 1995. <http://dosfan.lib.uic.edu/ERC/bureaus/eap/950725WiedemannUSChina.html> (accessed: September 16, 2009).

24. <http://dosfan.lib.uic.edu/ERC/bureaus/eap/950725WiedemannUSChina.

With the development of economic globalization and increasing international exchanges, non-governmental American organizations (such as multinational corporations, universities, and the news media) have been playing an increasingly important role in ALE.[25] Along with the development of global trade and the explosion of multinational corporations in quantity and size, their bylaws and internal rules, based largely on US laws, have become effective outside their home country. It is therefore becoming urgent to find a way to balance and harmonize the relations between these rules and the local norms and policies, when such organizations set up their subsidiaries and branches abroad.

In addition, lawyers and accountants in close relation to multinational corporations have become a group of unofficial law-makers. As multinational corporations become (informal) rule-makers in international trade and business, the role of lawyers and accountants has undergone subtle changes: on an obvious level, they are professionals in the field of the application of law, yet, as representatives of corporate interests, they become rule-makers as well.

American universities and foundations play an essential role in ALE by way of education. In Japan, American law schools are seen as having as their fundamental goal 'to provide the training and education required for becoming an effective legal practitioner, i.e., the institutions provide a 'professional legal education' (Maxeiner, 2003: 37–51).

As for the news media, the world has been witnessing their consummate skill and tremendous advantage: from the trial of O.J. Simpson, a vivid lesson in American law with an audience of hundreds of millions across the world, to Bush v. Gore, to the popular spread of *Boston Legal* and other American literary and artistic works related to law, and to the well-known Miranda Law.

To sum up, there are many ways to demonstrate the workings of the ALE and its influence in the fields of administration, legislation, judicature, politics, economy, education, culture, technology and other areas of individual jurisdiction or at international level.

html> (accessed: September 8, 2009)

25. See the preliminary study on the theory and practice of legal globalization <http://www.jus.cn/ShowArticle.asp?ArticleID=70> (accessed: September 8, 2009)

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

Therefore, the globalization of law is, to some extent, a synonym of its Americanization. (Renhui, 2010)

COMMENT ON AMERICAN LAW EXPORT: PURPOSE, INFLUENCE, AND BORROWISM

The fundamental objective in ALE is to achieve a better, more durable, sustainable and stable protection of US interests in a predictable way outside of American jurisdiction. It seems that the US has achieved a good record and is far from a crisis in this regard (Renhui, 2010).

The successful ALE can be attributed to many factors, including the position and combination of American Exceptionalism and Manifest Destiny, America's unique geographical environment, and the diversity and innovativeness stemming from the dynamics of concurrent legal theories. Of course, the economic liberalization, the globalization of markets and US law firms, the growing distrust toward government bureaucrats, heightened judicial activism, the demands for transparency, and the international influence of the American legal education also encourage the spread of American law (Kelemen and Sibbitt, 2002: 269).

Many methods, moral and immoral, legal and illegal, juridical and non-juridical, peaceful and non-peaceful, multilateral and unilateral, have been employed in ALE in different periods. Many adverse effects or negative influences can be traced back to such actions, and ALE, even today, is not always objectively beneficial to the target countries. However, few can deny that ALE has done *something* for the popularization of a legal civilization, and that, paradoxically, the ALE of today may be claimed to be conducive to actions leveled against colonialism and, to a certain extent, feudalism. As the world's most developed market economy with the most experienced managerial legal system, America has created a situation where its law is, largely, a blueprint for the 'inherent' requirements of the market economy. Constitutionalism, judicial review, the case law system, the checks and balances of power, the vigilance of public power, the pursuit of procedural justice, and other principles form what may be the most advanced legal civilization developed by humankind.

In fact, ALE demands continual innovation: in ideas, systems, practices, education, and research in the fields of law. Thus conceived, American law export in turn promotes the development of law within the United States. It may be said that innovation encourages globalization in terms of law export, and vice versa. Economic globalization requires the reduction of legal differences or barriers. Thus, the export or globalization of *some kind of law* is inevitable and it is only countries with a leading position in economic development, jurisprudential research, and legal practice that can live up to the task.

Hence, it is not reasonable to hold a too critical position toward the export or globalization of American law. An independent jurisdiction outside America may be alert to American selfish motives, yet, this does not necessarily preclude its willing adoption of a positive attitude toward ALE. Borrowism, for a number of reasons, may be a good choice. If so, other jurisdictions, when they attain a comparable level of advancement in the legal civilization of their respective countries and gain the 'soft' power, may themselves be placed in the position of an exporter of laws to the international community, including the US, thereby gaining a chance to contribute new solutions to world law and jurisprudence.

Yuan Renhui
University of Intl. Business & Economics
Beijing, China

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Yuan Renhui
University of Intl. Business & Economics
Beijing, China