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SPECIAL ISSUE ARTICLE

The uneven geographies of trust(s): finance capitalism, transnational legal innovation and shifting scales of institutional faith from decolonisation to post-socialism

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(Received 27 April 2026 UTC; revised 27 April 2026 UTC; accepted 27 April 2026 UTC)

Abstract

Building on Roger Cotterrell's call to theorise the law of trusts in relation to trust as an all-pervasive sociopolitical phenomenon, we explore the interplay between these two concepts of trust in relation to the rise of neoliberalism. Here, we centre how the ability of offshore trusts to evade tax/regulatory obligations compromises the ability of sovereign states to build institutions that nurture trust. Historicising this dynamic, we turn to how the rise of a post-imperial world of sovereign states in the context of decolonisation and the Cold War prompted elite interest in transnational legal innovations – especially trusts – that could avoid state-led redistribution efforts. Empowered by various crises, such innovations became central to neoliberal globalisation and its erosion of trust in the sovereign state. Focus on these material dynamics provides a new lens for conceptualising the failure of human rights and anti-corruption projects whose state-centric outlook detracts attention from broader transnational forces.

Keywords: neoliberalism; uneven geography; political economy; decolonisation; post-socialism

1 Introduction

Much ink has been spilled over the decline of trust in advanced liberal democracies since the 1960s. Countries in the Global South and post-socialist Europe too are routinely described as lacking it. Yet trust is central to the mythmaking involved in narrating the value of markets, legal systems and transnational institutions.¹ At the same time, one of the most trusted legal devices for the preservation and transmission of wealth – the trust – has quietly become central to the infrastructure of global finance, operating largely beyond democratic oversight and accountability. This coincidence is metaphorical, but it also raises deeper questions concerning the substantive realities of sovereignty, wealth (re)distribution and inequality. To conceptualise these issues on the broadest possible scale is to envision an 'uneven geography of trust(s)' whereby the correlating decline of popular trust in the nation-state and increase of elite trust in transnational legal mechanisms of wealth preservation are part and parcel of how capitalist political economy structurally concentrates resources and opportunities in certain spaces while depriving them in

¹Despite long-standing efforts to guarantee predictability via the creation of rigid legal schemes, especially given the influence of the Anglo-American common law tradition, equity (as a flexible tempering of legal rigidity) has done much to entrench considerations of trust (including the law of trusts) within structures of global capitalism (Herian 2021).

others (Smith 2010). What juridical understandings might best incorporate concepts of trust and trusts into such an account of global spatial unevenness and its sociohistorical evolution?

Among legal scholars, few are as attuned to this problem and as sociologically astute as Roger Cotterrell. After all, few have made the case so eloquently and influentially that legal ideas writ large must be interpreted sociologically (Cotterrell 1998). This ethos could scarcely be truer as it concerned his novel – but retrospectively commonsensical – assertion that trusts, as highly technical legal instruments for holding property, should be analysed in relation to ‘trust’ as a broadly multilayered interpersonal and sociopolitical phenomenon. Significantly attuned to greater social Zeitgeists, Cotterrell’s critical theories of the trusts/trust continuum came at key junctures within the ascent of neoliberalism – itself a variable theory of trust. Under the broad vision infamously advanced by neoliberal intellectuals, collective action by the state to improve social welfare, however ostensibly benevolent, must be distrusted as paving the ‘road to serfdom’ (Hayek 1944). Correspondingly, however harsh their effects might seem, the precept that unconstrained markets (and the states that guarantee them) will achieve self-regulating equilibrium and improve collective welfare must be trusted with the utmost devotion (Klein 2008). Possessed of such sophisticated and intertwined knowledge of the constitutive social realities of trust and the technical legal parameters of trusts, Cotterrell was uniquely well positioned to confront such assertions.

Writing during neoliberalism’s high point of political justification in the mid-1980s, he showed how the law of trusts directly challenged the neoliberal trust/mistrust placement complex. On this account, the neoliberal ideal of formally equal free individuals protected by minimalist states and empowered by robustly unconstrained markets could not account for how the law of trusts enables realities of generationally entrenched wealth hoarding, opportunity restriction and mandated obligation that furthers capitalist reproduction yet exists outside of (neo)liberal explanation (Cotterrell 1987, pp. 87–88). In other words, given the feudalistic hierarchical reality of trusts as forces driving capitalist accumulation, defences of capitalism based on equality and opportunity could scarcely be trusted. Writing shortly after the post-Cold War ‘end of history’, Cotterrell (1993), again invoking the law of trusts, posed the question of what might be lost or distorted when responsibility for interpersonal trust is displaced on to the legal mechanisms of trusts as a juridification of formatively social obligation. Contextually, this seemingly banal observation is rather remarkable given how the 1990s timeframe hosted numerous assertions that newly empowered (and neoliberalism-inflected) legal architectures of democracy promotion, human rights protection and opportunities via globalisation would increasingly merge the evolution of law with the widespread realisation of fundamental human desires (Marks 2000; Soirila 2021). Given the failures of so many of these law-connected progress schemes, and the corresponding cascade of mistrust that proliferated in their wake, it can be confidently argued that Cotterrell’s account of the paradoxical relationship between the legal specificities of trusts and the social generality of trust is deserving of further exploration.

We thus argue that engaging Cotterrell’s call to analytically link trusts and trust in relation to broader social patterns provides ample opportunity to contribute to the meta-account of neoliberalism’s foundations, trajectories and ultimate durability. Doing so advances Cotterrell’s account through advantages unavailable at the time of his original theorisation, namely subsequent historical developments and the relatively recent proliferation of innovative scholarship on neoliberalism’s origins and reception (see, e.g. Bockman 2011; Slobodian 2018; Whyte 2019a). Armed with these insights, we endeavour to map how various projects within the postwar global order intended to generate social and political trust at the level of the nation-state were undermined in great measure by the efforts of certain states to support the proliferation of transnational legal innovations intended to facilitate capital accumulation beyond borders (Palan 1998).²

²This inquiry is thus highly aligned with Cotterrell’s (2012) efforts to theorise the challenges presented by ‘transnational law’.

While this undermining of trust in the state is part and parcel of the broader edifice of neoliberal legality that cuts across variable scales and areas of law (Brabazon 2016), there is particular value in centring the legal form of the trust as a spatially mobile instrument of property holding in this regard. After all, trusts, especially in their offshore capacity, often enable property owners to retain the advantages of said ownership while avoiding otherwise associated legal liabilities such as debt and taxation (Bennett and Hofri-Winogradow 2021). This is to say nothing of their ability to facilitate money laundering (Muller *et al.* 2012). As such they pose a direct challenge to the state's ability to finance institutions intended to promote public trust across all of society. Embracing Cotterrell's (1998) point that legal ideas must be interpreted sociologically, we assert that the normativity of this situation cannot be decoupled from a multi-faceted material account of how, under distinct social, ideological and geopolitical conditions, trusts as legal instruments gained great latitude in undermining trust as a political ideal on a global scale. Through such an account it becomes possible to map neoliberalism's production of uneven geographies of trust(s).

Part I sets a theoretical framework by exploring offshore trusts and their operation in relation to the proposition that the international system is comprised of a world of sovereign nation-states empowered by the trust of their populations, a reality that only came into existence following the World War II. Centring gaps between ideal and reality against this theoretical backdrop, Part II begins the main historical account as it showcases how multi-faceted tensions in the contexts of the Cold War and decolonisation challenged the novel ideal of a world of sovereign states. On this account, we argue that innovations in trust law (especially as it facilitated the growth of 'tax havens') intended to shield entrenched wealth from popular upheaval in this context were indicative of a broader transition from the 'social' to the 'contemporary' globalisation of legal thought. Here, trust in bounded models of reasoning could effectively supplant the messy realities of building political systems capable of garnering widespread social trust.

Part III then examines how the varied crises of the 1970s and responses to them (especially within the domain of oil production) entrenched the enhanced proliferation of financialised capitalism often deemed 'neoliberalism'. This turn to financialisation vastly increased the relevance of the trust as a mechanism for transnational capital accumulation while, simultaneously, new discourses on international human rights presented critiques of the nation-state as an institution worthy of trust. Part IV focuses on the juridical innovations prompted by this turn to neoliberalisation beginning in the 1980s – especially as the attempt to standardise the law of trusts via the 1985 Hague Trust Convention helped institutionally coordinate many of the world's 'tax haven' jurisdictions. Finally, Part V examines a further saga in the interplay between trusts and trust through an examination of the post-1989 neoliberal restructuring in the former Eastern bloc/Soviet sphere. Here we focus on how, while widespread capital flight facilitated through offshore trusts has done much to erode public trust, this structural dynamic is largely absent from campaigns against 'corruption' that equates this issue to regionally endemic practices that Western-inspired reforms seek to eradicate.

2 Theorising trust(s) in a world of sovereign states

The power of the trust centres on its ability to separate the legal title of one from the ultimately overriding beneficial interest of another who is freed from the obligations that accompany property ownership. While long associated with protecting the interests of the vulnerable (children, the elderly, people with disabilities, etc.), per Cotterrell's (1987, pp. 86–87) observation, this association of vulnerability is the key to the beneficiary's power as it allows them to maintain all the advantages of ownership without its standard liabilities. Though certainly not all trust beneficiaries are powerful – a point Cotterrell (1993, pp. 80–82) subsequently emphasised – to imagine how a powerful beneficiary might maximise their status as such is to imagine how trusts can operate in a transnational, or 'offshore', capacity. Here, a trust settlor with sufficient resources

and access to expertise can establish a trust whereby a trustee located in an offshore jurisdiction with minimal tax and/or regulatory liability can disburse assets to a beneficiary (possibly the settlor) whose liabilities in their jurisdiction of residence are significantly reduced (Bennett and Hofri-Winogradow 2021, pp. 698–700). Given this trust-based enabling of trans-jurisdictional possibilities ‘a Russian national living in London can benefit from a multimillion-dollar portfolio of US stocks held in a Cayman Islands trust without paying tax on the profits, because he is not the legal owner of the assets’ (Harrington 2017, pp. 35–37). In other words, the wealth acquired and maintained at all levels by this transnationally mobile individual protected by their weakness-assuming beneficiary status is wealth effectively removed from the benefit of the average Russian, American, Briton, Cayman Islander or resident of any other nation on the greater value chain who contributed to producing this beneficiary’s wealth (Økland 2024).

When accounting for how the status of trust beneficiary, despite vulnerability associations, is able to guarantee and enhance the wealth and power of already wealthy and powerful individuals (at the expense of greater society-wide resource distribution efforts and the trust they generate), identifying origins is key – lest current realities be deemed inevitable. Going back far enough, the trust appeared as a means of avoiding feudal obligation in medieval England where the institutional separation between common law rights and equitable (beneficial) interests, handled by the King’s Courts and the Court of Chancery respectively, could facilitate such differentiated ownership claims (Bean 1968).³ Contemporaneously, differentiated jurisdictions united under a common scheme of sovereign hierarchy laid the groundwork for facilitating enforceable splits between legal and beneficial interests in a common property across ostensibly separate legal orders (Dharmapala 2024; Haberly 2021). In subsequent centuries, such hierarchical differentiation flourished under conditions of European imperialism whereby absolute indivisible sovereignty was consigned to a Eurocentric ‘family of civilised nations’ that left the rest of the world open to colonial schemes of sovereign divisibility and the internationalised protection of individual property rights (Keene 2002). This was especially true as it concerned the British Empire, a jurisdictionally heterogeneous meta-entity united by royal prerogative and the facilitation of capitalist accumulation (Darwin 2009), that hosted numerous applications of the law of trusts innovatively deployed toward this end (Tamaruya forthcoming). Such developments were in no way separated from the greater transformation of trusts to better facilitate capitalism as industrialism, free trade and global integration reached an unprecedented high point in the nineteenth century (Alexander 1987; Buzan and Lawson 2015).

While the hierarchical divisibility of sovereignty did much to facilitate the mechanisms of trans-jurisdictional trust formation and its enabling of powerful beneficiaries, what was to happen if indivisible sovereignty was universalised on a planetary scale? This is precisely what occurred after the World War II as European colonies in Asia and Africa, with support from the Soviet Union/Eastern bloc, cast off foreign rule via concerted invocations of the right of nations to self-determination that lodged a profound juridical-cum-political challenge to imperialism and colonialism writ large (Getachew 2019; Özsü 2024; Thomas 2024). While never entirely achieved in practice, this factual and normative breakdown of empire largely succeeded in entrenching the notion that, in a manner unprecedented in history, every human being is – or should be – the citizen of a sovereign political community (Jackson 2000, p. 9). The success of this vision of transition from a world of imperial hierarchy to a world of independent nation-states does much to conceal so-called anomalies, particularly the transnational movement of wealth and power via trusts that is typically spoken of through under-theorised and deterritorialised invocations of a mystified domain deemed ‘the offshore’ separated from the international states-system (Lythgoe 2022; Quentin 2020). When considering this conundrum in relation to diverging trajectories of

³Despite long-standing presentations of trusts as a uniquely English legal development, not only did other concepts – such as the waqf in Islamic jurisprudence – exist, but there is reason to believe they shaped the law of trusts in medieval England (Gaudiosi 1987).

trusts as a narrow legal instrument and trust as a broad sociopolitical ideal, the intersection between two typically non-engaging scholarly discourses becomes highly important.

The first discourse, prominent among critical geographers and critical geography-oriented legal scholars, asserts that presumptions of a flat two-dimensional map of a world of self-contained sovereign states prevalent in the fields of international law and politics rest upon highly questionable presumptions concerning space and its production. For such scholars, viewing territory as a self-evident fact and a priori container of society ignores how contingent social processes shape its continued production and assertion (Elden 2019; Lythgoe 2024; Raffestin and Butler 2012; Ruggie 1993). This includes how, beyond proclaimed borders, such territorial processes often are constituted through transnational networks where dynamics of power, especially powers of knowledge production and legal assertion, are vitally relevant (Agnew 1994; Collyer and King 2014; Potts 2020). To ignore these dynamics is to fall into a 'territorial trap' (Agnew 1994). Such considerations, and especially as they concern uneven geographies of taxation (Aalberts 2018), are especially important when considering the differentiations of 'public' sovereignty and 'private' property on a global scale in light of contingent ideologies of political economy. As Quinn Slobodian (2018, p. 10) noted in framing his history of neoliberalism, following Carl Schmitt, the world of human endeavour could be mapped in two ways: by the division of sovereignty according to a logic of imperium, and by the division of property according to a logic of dominium. When considering the function of the trust as splitting different ownership interests across jurisdictions, while the dominium map takes on enhanced dimensions, it is enabled to function as such by virtue of the actors on the imperium map who have internalised particular forms of knowledge.⁴ While this first discourse provides ample grounds for theorising how remnants of imperial hierarchy survived or were reformulated into an era of universal formal equality, it is the second discourse that exposes the stakes of this theorisation.

The second discourse, prominent among political theorists and political theory-oriented legal scholars, focuses on the normative dimension of sovereign statehood and its universalisation in repudiation of colonialism. While subject to many formulations, the value of state sovereignty according to this body of discourse stems from its ability to accommodate pluralism in a world defined by deeply embedded disagreement (Green 2024; Jackson 2000; Roth 2011; Walzer 1980). This was especially true as it concerned the postwar context of decolonisation and ideological struggle. Here, the protection of sovereign statehood from external aggression and intervention became a common presumption among the otherwise disagreement-prone capitalist Western bloc, socialist Eastern bloc and anticolonial Global South pursuing, among other projects, non-alignment with either bloc (Roth 2012, p. 32). Such a stance against external meddling was coupled with how – in a manner unifying the three meta-projects respectively deemed the 'First World', 'Second World' and 'Third World' – internal state mechanisms were the assumed means of attaining progress (Ogle 2017, p. 1457). The ability to place trust within such visions of improvement in this new universal world of sovereign states was something of an apotheosis of that which Kennedy (2006b, pp. 37–46) deemed the 'second globalisation' of law and legal thought. Preceded by a first globalisation of 'classical legal thought' whereby formalistic imaginaries of law's apolitically coherent internal logic justified a world of imperial free trade, social inequality and pro-capitalist innovations in the law of trusts (Kennedy 2006b, pp. 25–37), this second globalisation – that Kennedy dates as emerging in the early twentieth century – made the 'social question' its primary focus (Case 2016). Why then did pursuit of the social question weaken at its moment of universalisation in a manner that granted new life to earlier legal innovations formed in contexts premised on justifying hierarchy?

⁴An illustration of this dynamic involves diverging subject matter of international treaties. For instance, while the UK includes its 'Crown Dependencies' (which include the infamous tax havens of Guernsey and Jersey) as covered under its defence treaties, it excludes them in its tax-related treaties on the grounds that they are not part of the UK (Lythgoe 2022, pp. 190–91).

When addressing this query, it is important to expound upon how the two discourses on the spatial complexity of the international system and the promise of universalised sovereignty can be succinctly linked if the premise of a universal world of sovereign states is imagined, not in terms of descriptive reality, but in terms of future promise. On this point, the character of sovereign states (especially in the Global South) as arbitrary entities where histories of conquest and colonisation persist as presumptively irreversible borders is not an anomaly, but a structural feature (Roth 2010, pp. 403–404). As such, the presumption that the state truly represents the will of its underlying political community that is accountable to no external power in building the political, social and economic systems of its choice according to its own desires and conditions is less a factual reality than a promise of latent potential. Arguably, the acceptance of formative injustice is the price to be paid for this promise of future uplift. To frame sovereignty in this way is to acknowledge an underacknowledged dimension where, in addition to being a political community's claim over a demarcated spatial designation, sovereignty is also a distinct temporal designation whereby that community's authority to determine its destiny is presumptively eternal (Davenport 2016, pp. 261–63). Centring this temporality overcomes the so-called 'territorial trap' by allowing sovereignty to be evaluated, not as self-contained isolation – an abstraction that never truly existed – but as the possession of agency to shape future possibilities (Cunliffe 2019, pp. 38–39). It is this promise of agency that supplies the presumption that state-led improvement can be trusted.

When configuring the rise of neoliberal anti-statism as that which eclipsed possible futures by derailing trust in social uplift projects undertaken as exercises of national sovereignty, a key aspect of neoliberalism's ascent must be noted. As Slobodian (2018, pp. 5–7) has shown, contra standard models of justification, neoliberal calls for privatisation, financialisation and the curtailing of the welfare state are less measures of wealth generation and more measures of wealth 'encasement'. In other words, by disclaiming state functions beyond the active facilitation of market competition (and the maintenance of coercive institutions to manage its social consequences (Wacquant 2009)), neoliberalism's influential proponents sought to preserve hierarchies and inequalities as a submission to 'natural order' that must be safeguarded against state efforts to create substantive equality (Whyte 2019b). While the retooling of numerous legal doctrines acted as channels of encasement in placing concentrations of wealth beyond popular control, few have been as impactful as the trust given how adept it is at concealing the sources, accessibility and ultimate value of the wealth it safeguards (Harrington 2017). When transnational mobility via 'the offshore' is brought to this equation, it becomes clear that trusts (a legal instrument designed to uphold the sacrosanct value of interpersonal relations) do much to uphold neoliberalism, especially as it fuels elite-directed financialisation as a pillar of the world economy (Davies 2017). In Brooke Harrington's (2017, p. 42) words, the trust serves neoliberalism's reproduction 'by consolidating the investor as the central figure of the global economy; by maintaining and enlarging the Anglo-American character of finance worldwide, and by increasing the autonomy of finance from the nation-state system'. Given its furthering of these logics, the position of this legal mechanism as a medium for redistributing trust (broadly understood) away from vast swaths of the global population and toward an elite cadre of transnationally mobile investors – and their legal and financial advisors – demands much contextual scrutiny.

Through this wide-ranging account of this process, a clearer image of the uneven geography of trust(s) begins to come into focus. In juxtaposing these two forms of trust we do not aim to highlight two parallel curiosities but to show how both configure the relationship between authority, obligation and global inequality. As we will show, human rights discourse bolsters narratives of the state that recast it as an untrustworthy custodian of development (while also legitimising oversight by international actors). Offshore trust law, in the meantime, allows private actors to relocate wealth to alternative custodians deemed more legally 'trustworthy' than post-colonial or post-socialist states. Seen together, they constitute two dimensions of the same transformation in how trust is allocated and institutionalised in the late twentieth-century global order. In other words, following

Cotterrell's call to treat legal ideas as social relations, we read these two notions of trust together to highlight how legal forms and moral discourses can be seen as jointly re-shaping the distribution of authority and wealth in the global economy of late capitalism. Importantly, this transformation is stabilised through a juridical and ideological division between public and private, where trust in collective political institutions is problematised as inefficient or corrupt, while trust placed in private legal forms is rendered technical, apolitical and so, legitimate. The conceptual separation between public and private is also what allows the production and hegemonisation of the idea of corruption as a distinct (and central) political problem in the liberal polity (Bratsis 2003). Yet understanding how these contingent bounds of 'public' and 'private' came to exist as they did requires a broad inquiry into origins.

3 Sovereignty, trust and capital after empire

Following the World War II, for the industrialised Western powers, under the unquestionable leadership of the US, broad social sentiment was famously expressed through an 'embedded liberalism' whereby White working classes, in exchange for abandoning anything more radical, would gain the benefits of a robust publicly empowered welfare state (Ruggie 1982, pp. 393–98). Representing this Keynesian ethos at the level of international monetary policy, the Bretton Woods system established in 1944 provided a system of fixed currency exchanges centred on a US dollar linked to the Gold Standard (Helleiner 2019). Thus, as the question of decolonisation loomed large, especially in light of how wartime debts accrued by imperial powers made maintaining colonies increasingly difficult (Tooze and Martin 2015), a degree of financial stability was a core presumption of this postwar American-dominated world. When considering the broader prospects of collapsing empires giving rise to nations, for its part, the US – having consciously seized its moment for global supremacy as the war still raged (Wertheim 2020) – offered a world vision via its novel project of 'international development' where the installation of law and legal institutions were to play a central role (Rist 2019; Trubek and Galanter 1974). Seeing themselves as an alternative to the old imperial powers, in interpersonal and community-based terms, so many idealistic Americans placed vast degrees of trust in themselves and their country to build social trust-generating systems anywhere on Earth (Immerwahr 2015).

As the principal counter-hegemonic challenger to this American dominion, the actions and efforts of the Soviet Union can similarly be interpreted through the rubric of (dis)trust in a world rapidly universalising the nation-state form. While the experience of the World War II rendered Joseph Stalin's state-centric agenda of 'socialism in one country' unimpeachable within Soviet society (Weiner 2002), doctrinaire Marxist views of inevitable confrontation with the capitalist West underwent much evaluation following the War – especially as nuclear weapons fundamentally altered the greater geo-strategic landscape (Campbell 2017). Through this transformed understanding of trust in the world revolution, Stalin's successor Nikita Khrushchev (1959) came to offer an alternative via the 1956 doctrine of 'peaceful coexistence' whereby East–West competition was to occur within the domain of offering differing socio-economic models (Friedman 2015, p. 39). Unlike capitalist societies, the Communist Parties of the war-ravaged societies in the Soviet orbit commanded trust and derived political legitimacy not from immediate material rewards but from a revolutionary vision-promise of future prosperity. The Party anchored its authority in the collective project of 'building socialism', with the promise of future material and social betterment to justify present sacrifices and deferred entitlement. Despite resource and wealth differentials vis-à-vis the Americans, the Soviets' trust in their ability to appeal to the greater world was far from unfounded. After all, while the rise of the US resulted largely from a significant interplay of historical luck, geographic privilege and accumulation-based ideologies of superiority, the Soviets – who rapidly transformed a largely agrarian society into an industrial

superpower – arguably provided a far more realistic emulation model for both war-ravaged Europe and the post-colonial societies of the Global South (Báli and Rana 2018, p. 272).⁵

With the state of the world largely framed as a ‘Cold War’ between the US and the Soviet Union (not to mention the rivalries the People’s Republic of China maintained with both superpowers regarding Third World influence (Westad 2005)), who were those in the Global South to trust when navigating the vicissitudes of decolonisation? In building institutions that could be trusted, often under the broad banner of ‘Non-Alignment’ disclaiming dependency on any more powerful ally, challenges on this front were manifold. First and foremost, there was the matter that the structures of extraction and distribution in the (post)colonial world were largely built with the purpose of providing value, especially through primary resource production, to be circulated within the broader world economy under conditions of inequality-premised alien rule (Alvaredo *et al.* 2021; Bhambra 2020). Radical efforts to transform state and social institutions in these societies had to always bear these considerations in mind (Friedman 2022). Compounding this was the character of social relations within these societies where, as Clifford Geertz (1973, p. 236) observed, there were frequently two sets of competing elites – those who had been empowered from the times of colonial rule and those who had been empowered in leading the resistance to colonialism. Potential for conflict in these contexts was vast, especially when considering how structurally inherited distributional vulnerability and Cold War geopolitical rivalries provided ample catalysts for violence based on ethnic identities that were shaped through processes of colonial rule (Mamdani 2018).

Interestingly, the height of Cold War proxy confrontation throughout the Global South was the same timeframe that, according to Kennedy’s chronology, the second social-oriented globalisation of law/jurisprudence was giving way to a third globalisation deemed ‘contemporary legal thought’. In Kennedy’s (2006b, pp. 63–71) telling, this third globalisation consisted of much pragmatic chastising of grand designs to restructure social relations through sweeping transformations of laws and institutions and instead shifted to a narrow pragmatism focused on bounded matters of ‘policy’ as opposed to the preceding era’s fundamental questions of ‘politics’. True to Cotterrell’s (1993) observations, this shift from the ‘social’ to the ‘contemporary’ as matters of legal globalisation reflected a hope that interpersonal trust (the stakes of which were vastly expanded in the postwar era) could be contained by the in-built reasoning processes derived from bounded systems of law. According to Cotterrell (1993, p. 85), ‘[t]he possibility of deciding deliberately whether to give or withdraw trust in impersonal systems may be limited as compared with the situation of interpersonal trust’. This prospective limitation on the power of collective interpersonal relations via recourse to law’s systemic impersonality offered much solace to those who feared new horizons of social trust, especially as they were linked to visions of redistributing global wealth and influence. Thus, while Kennedy’s proposition of ‘contemporary legal thought’ has attracted much critical commentary (Desautels-Stein and Tomlins 2017), if it is to be historicised in relation to the importance of transformed understandings of trust via the novel globalisation of the nation-state form, then one element that must inform this is the backlash against anticolonial revolution in the West (Hall 2017). Here, for those sceptical of Third Worldist efforts to restructure society after colonialism, varied interconnecting mechanisms of law, transnationally operating across differing legal regimes, enabled the constraining of radically transformative efforts deemed ‘excesses of self-determination’ (Eagleton 1953).⁶ In other words, the fact that some sought to place trust in revolutionary politics prompted others to place their trust in juridical mechanisms that would shield entrenched interests from revolutionary change.

⁵While not prone to normatively linking law to the process of development, the Soviet Union was arguably the most comprehensive transformation of a society through law in history (Newton 2014).

⁶Among American lawyers, one method for confronting revolutionary prospects involved extending the jurisdiction of domestic courts over state actions deemed ‘commercial’ in a manner that challenged Third Worldist efforts to extend state control over economic realities (Potts 2024, pp. 87–115).

Meanwhile, new economic thinking that was concerned about the ‘excesses of self-determination’ was on the rise in some of Europe’s and America’s universities. While millions across the Global South celebrated the prospect of national self-determination, a group of economic theorists, known as the Geneva School of neoliberal thought, saw the commitment to national sovereignty and autonomy as a threat, and debated the need for nations to be embedded in an international institutional order that safeguarded capital and protected its right to move freely throughout the globe (Slobodian 2018, pp. 9–13). Over the course of the two decades before Margaret Thatcher and Ronald Reagan would solidify the power of neoliberalism, Hayek’s (1978, pp. 164–66) call for isonomy – the principle of a ‘same law’ that would insulate markets from popular democratic pressures, including redistributive demands and protectionist measures gained increasing influence. Such assertions succinctly followed Schmitt’s above-detailed distinction between ‘imperium’, or government over people, and ‘dominium’ – the sanctity of property rights across borders (Slobodian 2018, p. 10). This distinction fittingly captures the neoliberals’ projection of a spatial order that would ultimately prove more consequential than either the geopolitical walls of the Cold War or the borders of post-colonial nation-states.⁷

When detailing how anti-anticolonialism (implicitly or otherwise) among influential Western legal thinkers produced a juridically diverse, but structurally coherent, array of legal assertions/ implementations, a place to start is with the questioning of the sovereign inviolability of Third World states themselves. While the Charter of the United Nations axiomatically declared a general ban on conducting international relations through the use and/or threat of force, those who feared post-colonial sovereignty as a source of danger and disorder began formulating exceptions to this general ban – often through expansive interpretations of ‘self-defence’ (see, e.g. Bowett 1958). However, while such use of force discourse mobilised questions of high politics against an escalation-concerned Cold War backdrop, a more banal and widespread application of international law concerned the legal status of coloniser-owned property and inherited obligations in post-colonial states. Even when contrasted against the prospect of military devastation, when viewed in the aggregate, this latter application was arguably far more devastating to Third World prospects of building post-colonial nation-states that could be invested with a high degree of social trust.

On this point, the independence of new states required much clarification of the law of state succession that determined the apportionment of rights and obligations upon the termination of an existing structure of sovereign authority (Craven 2009). Applying this framework to decolonisation, as a default matter, properties in which Western administration and business interests held legal title, including the ‘concessions’ whereby private companies were granted monopolies by the colonial metropole that served the ends of colonisation (Craven 2019, pp. 109–15), were now ‘foreign owned’ upon the independence of the new succeeding state (Kleinschmidt 2015). Thus, as a matter of the international law of state responsibility that determines one state’s obligation toward the citizens of another, any expropriation by a new post-colonial government imposed a duty to compensate the foreign property owner in a ‘prompt, adequate, and effective’ manner (Schachter 1984). Such legal constructions, sustained by questionable private law analogies, foreclosed the prospects of colonial enterprises (typically built through the labour of local populations) from being rechannelled toward post-colonial social ends.⁸ This, in turn, generated immense pressure on Third World states to attract foreign direct investment – a demand that inevitably invited speculation in how the trust of foreign investors

⁷During that same timeframe, the Soviet-dominated Second World too shifted gears and began its own pursuit of neoliberal reforms and political opening to the West (Bockman 2011), a trajectory that not only undermined the ambitions of the Non-Aligned Movement but also eroded the possibility that the Third World could place its trust in socialist modernisation as a viable alternative to global capitalism.

⁸For instance, while Western jurists invoked equitable treatment as a means of delivering fair treatment to property owners in former colonies, they had nothing to say of the broader inequity of colonialism, Craven (2019, p. 118).

might be guaranteed through law (Schwarzenberger 1967). Empowered by this coercive dynamic, leading architects of modern international investment law took this opportunity to craft interpretations of this regime that granted extensive rights to foreign investors while imposing correspondingly extensive burdens on host states (Miles 2013; Slobodian 2018, pp. 121–45; Sornarajah 2019).

While the above-outlined story is increasingly familiar to critical legal scholars, it is only part of a larger story concerning the uneven geographies of trust(s). On this point, when considering the post-colonial flight of capital – whether through compensation for expropriation or asset withdrawal in anticipation of expropriation – there is the follow-up question of where that capital ended up. As Ogle (2020) has shown, contrary to the assumption that most of these funds were repatriated to the imperial metropole (as was the case with so many individual European administrators, settlers and profiteers), much of this wealth largely went to – and consequentially expanded – offshore tax havens. After all, and especially important when considering that favourable tax rates motivated so much European colonial settlement and investment in the first instance, if these funds were repatriated to the metropole, they would be subject to the high tax rates that financed Western welfare states in the name of embedded liberalism (Ogle 2020, p. 219). Through these tax havens, in a cross-jurisdictional capacity, the private law of trusts could split legal ownership of colonialism-sourced assets in tax havens from beneficial interests in the metropole capable of accessing said assets (Ogle 2020, pp. 228–31). This thus bridged the gap between the ability of colonialism's former functionaries to seek refuge in the metropole and their ability to shield their colonial-era gains from taxation from metropolitan states – let alone the post-colonial societies that enabled these gains in the first instance. In no way confined to former colonists, this expansion of tax havens – most famously in the Caribbean – promoted a boom in innovative legal-cum-financial services that attracted many the world over, whether they be wealthy Westerners concerned with their states' tax-supported welfare policies or local elites on the wrong side of a post-colonial conflict (Mollan and Sævdal 2025). While trust in these trust-related tax haven services can be correlated to the decline in the trust capable of building empowered social states, and thus posited systemic trust as a substitute for collective interpersonal trust (Cotterrell 1993), this dynamic of trust and trusts took on an entirely new dimension as the 1960s gave way to the 1970s.

4 The 1973 oil shock, the rise of human rights and reconfigurations of Cold War relations

On 15 August 1971, the 37th US President Richard Milhous Nixon announced that US dollars would no longer be redeemable in gold, thus ending the Gold Standard-premised Bretton Woods system of fixed currency-exchange rates (Zeiler 2013, p. 3). Vastly opening channels for capital mobility across national borders, influential economists recommended this measure as a means of curbing inflation (Maier 2010, p. 30). However, the prospect of assessing this measure's success was compromised by the Organisation of Petroleum Exporting Countries' (OPEC) launch of its 1973 oil embargo whereby the leading petroleum producers dramatically raised the price of oil from \$5.12 to \$11.65 a barrel against selected nations in retaliation for their support of Israel during the Yom Kippur War (Issawi 1978). Triggering an economic recession, through this measure, a group of post-colonial states that controlled the market share as the primary producers of a vital commodity demonstrated their ability to wield power over the West (Taylor 2019, pp. 134–39). Inspiring counter-hegemonic imaginations the world over, especially as it merged with predominantly Latin American formulations of Dependency Theory stressing the limits of formal independence (Love 1980), OPEC's success reconstituted notions of Third World trust so frustrated by the above-outlined realities of formal independence (Garavini 2011). In its supreme manifestation, trust in the solidarity of African, Asian and Latin American states, newly

empowered as a majority in the UN General Assembly, brought about the assertion of a New International Economic Order (NIEO) that – through fairer terms of trade, restrictions on foreign investors and the creation of new institutions – aimed to eliminate the gap between rich and poor nations (Bedjaoui 1979; Ogle 2014; Özsü 2017).

The oil crisis and the economic recession that followed also affected the Second World significantly. Although the Soviet Union initially benefited from the oil crisis, which put a premium on its own oil resources, the countries of the Soviet-led Council for Mutual Economic Assistance faced rising import costs and did not enjoy improved terms of trade with the rest of the world, which deepened their economic vulnerabilities. Meanwhile, the Soviet Union found itself entangled in a zero-sum allocation dilemma – balancing domestic consumption, subsidised exports to allies and hard-currency sales to the West – which eventually weakened industrial growth and undercut long-term economic gains (Kaufmann 2014). Neither the Soviet Union nor its allies translated their rhetorical commitment to global equality into substantive support for the NIEO: while Eastern European states endorsed calls to redress inequality in principle, they prioritised their own development constraints, and the Soviet Union viewed the NIEO primarily through the lens of superpower politics, wary of undermining its strategic interests or relations with both the West and its allies (Zurawicki 1982). From this point onward, the Global South had significantly less of a reason to place much trust in the socialist East.

While popular trust in the nation-state was proving resilient in the Third World, against this same backdrop, Western trust in the state as a collective vessel of political expression began reaching lows hitherto unforeseen in the postwar era. The socialist governments of the East too started experiencing a gradual erosion of public trust, closely tied to worsening economic conditions: slowing growth, rising external debt and recurrent shortages of goods undermined the credibility of the systems whose legitimacy rested on promises of material improvement and social security (Verdery 1996; Kornai 1992). Afflicting Western populations who had grown accustomed to increasing standards of living, the misery of recession-triggered ‘stagflation’ brought about a malaise that was made all the sharper by disdain toward the OPEC nations behind the embargo, especially given the rallying point it provided for the Third World (Maier 2010). This of course triggered further resentment among those whose opposition to Third Worldism was, at least in some capacity, influencing the broader formulation of post-social ‘contemporary legal thought’.⁹ Expert advocacy for outright military intervention against oil-producing states was not uncommon against this backdrop, and casting fear in terms of civilisational hierarchy was ever-present (Painter 2014). To quote Robert W. Tucker (1975, p. 30), an international politics scholar at Johns Hopkins University who earlier wrote a US government-commissioned treatise on the laws of naval warfare (Tucker 1957): ‘[i]f force is ruled out, it is in part because we assume, whether consciously or unconsciously, that the Arabs are, after all, still only Arabs, and that in the deadly game we are now playing with them, generations of political superiority and economic supremacy must count for something’. Questionings of trust were palpable on all levels by those faced with this new reality.

The erosion of political trust in post-colonial states during the Cold War established the conditions under which economic trust was reallocated to private legal structures including offshore trusts, which were increasingly presented as more reliable custodians of wealth than the state. Under these conditions, the great enduring legal-cum-ideological development in this timeframe that helped consolidate such a restructuring of the terms of social trust, or at least its idealisation, was the rise of international human rights law and the broad associated movement advocating on its behalf. While famously articulated following the World War II via the 1948 Universal Declaration of Human Rights, in the 1970s this legal formulation seemingly provided a

⁹For instance, in the wake of the 1973 Arab-Israeli (Yom Kippur) War, Eugene Rostow – former Dean of Yale Law School – became a leading force in resisting any compromise with the Soviet Union and a stark proponent of interventionism within the nascent neoconservative movement (Rosenburg 2015).

universalised explanation for so many issues and events throughout the world (Eckel and Moyn 2015). While international human rights offered advocacy points for those with many (or no) political agendas, in coinciding with the vast decline of Western trust in the sovereign state, this rhetoric enabled many disaffected and/or opportunistic voices to condemn the prospects of Third World sovereignty in the name of universal ‘humanity’ (Moyn 2010). Moreover, this rhetoric complemented new moral philosophy critiques of the NIEO’s focus on the gap between rich and poor nations as ignorant of the more pressing moral question concerning the poorest within the Global South (Getachew 2019, pp. 173–75). Awash with numerous media images of mass famine occurring across significant swaths of the post-colonial world in the 1970s, this message proved captivating to many Westerners (de Waal 2018, pp. 77–79). In a manner that connected human rights, development economics and new anti-statist theories of political economy, the envisioned means of uplifting the poorest of the poor was not action by Third World states (perceived as incompetent at best and psychopathological at worst) but rather providing these forsaken peoples with access to the wealth-creating potentialities of free market capitalism (Whyte 2018). Aligned with the philosophies of figures such as Friedrich Hayek and Milton Friedman, trust in this overarching anti-collectivist dynamic provided the link between human rights and that which is broadly deemed ‘neoliberalism’ (Whyte 2019a).

As a powerful antisocialist discourse, the concept of human rights in the 1970s posed ideological and political challenges for the Soviet Union and its allies too. Socialist states were deeply suspicious of the Western promotion of human rights, often seeing it as a political instrument aimed at undermining socialism (Moyn 2010; Thomas 2001), yet they did not reject the idea outright. Instead, they advanced an alternative conception that prioritised economic and social rights – employment, housing and education – over civil and political freedoms, a position they vigorously defended in international forums such as the United Nations (Cmiel 1999; Mark and Slobodian 2018). The 1975 Helsinki Final Act, however, complicated this stance: while the Soviet leadership embraced it as a means of securing détente, the agreement’s human rights provisions provided dissidents across Eastern Europe with a legal and moral vocabulary to challenge state authority. In this way, human rights discourse, initially dismissed as a Western ideological weapon – a depoliticised anticommunist rhetoric – ultimately became a powerful tool in eroding the legitimacy of the socialist systems (Thomas 2001). With its focus on individual, transnational rights, the human rights movement replaced earlier, more political and collective visions and projects. Here, too, the ideological spin on human rights concerned its capacity to free societies of the socialist East from ‘totalitarian’ control, and bestow them with access to the wealth-generating possibilities of free market capitalism.

Under these variable social-cum-ideological-cum-institutional conditions, the legal phenomenon of the offshore trust – especially as it was expanded by the post-colonial boom in tax havens – had ample opportunity to thrive. First of all, the precipitous decline in capital controls via the termination of the Bretton Woods system and its order of fixed currency-exchanges vastly enhanced the transnational mobility of capital, thus providing vast occasion to safeguard wealth from taxation and other liabilities via offshore trusts (Harrington 2017, p. 52). An agent of financialisation par excellence, the trust – and the tax havens it facilitated – was of the utmost relevance to resolving the broader financial issues triggered by the OPEC embargo. As OPEC member states, mostly in the Middle East, now held vast sums of ‘petrodollars’ gleaned from heightened oil prices, many in the West feared that this monetary concentration would overturn the relationship between creditor and debtor nations in that newly enriched oil-producing states would develop the institutions capable of enabling sustained capitalist export (see, e.g. Joyner 1975). However, in seeking a resolution, Western states eager for these petrodollars to be filtered through their financial institutions were able to find common cause with the conservative and/or monarchic elements who led many of the major OPEC states – particularly those surrounding the Persian Gulf – who, like the Western elites, took issue with the Third World leftist and anti-

imperialist elements who viewed the 1973 embargo as laying the groundwork for the NIEO (Hanieh 2024, pp. 181–84; Hertog 2021).

The result was thus a petrodollar ‘recycling’ arrangement whereby Middle Eastern oil wealth would flow through US financial institutions in a manner that contributed immensely to global financialisation (not to mention oil-producing regimes and oil companies) while entrenching the US dollar as the global reserve currency (Hanieh 2024, pp. 184–90). As this arrangement demanded vast amounts of Anglo-American legal-cum-financial expertise, those functionaries brought with them ample knowledge of the common law trust and its varied cross-jurisdictional applications (Hanieh 2024, pp. 190–91; Potts 2016). Through these functions, a global elite that united elements of the old colonial metropole with new post-colonial sources of natural resource-based wealth had numerous transnationally operative institutional forms for enhancing private interests (especially offshore trusts) that could be trusted to a high degree. Moreover, through the hegemonic rise of human rights discourse, the power to critique this arrangement through the older analytical registers of capitalism, class and imperialism was vastly diminished. Though the language of international human rights offered rhetorical options to those of varied backgrounds and ideologies, its core location of pathology in acts of physical cruelty inflicted by sovereign states left few epistemic resources for condemning legal arrangements for the seemingly ‘bloodless’ accruing of vast sums of wealth on a transnational basis. As the neoliberal imprint on international human rights made clear, the ability to acquire wealth through channels unbound by the social agenda of any state was itself a fundamental human right in a world where inequality was the presumed natural order (Whyte 2019a).

In short, the two forms of trust discussed here are not merely metaphorical parallels but mutually reinforcing dynamics. Human rights governance repositions states of the Global South as unreliable or untrustworthy agents of development, which in turn justifies external oversight and constrains their redistributive ambitions. At the same time, offshore trust law offers private actors an alternative architecture of protection and reliability outside state purview. Together, these regimes channel trust away from post-colonial political institutions and into transnational legal infrastructures, contributing to the broader restructuring of sovereignty and wealth in the late twentieth century.

5 New juridifications of capitalist restructuring

Viewed broadly, these global shifts in political economy – and their accompanying restructuring of trust in relation to institutions of law and state – effectively crafted neoliberalism as a mode of being whereby efforts to build socially receptive national structures were remade in the image of offshore finance. In the Global North, the ability of traditionally regulated financial centres – especially New York City – to compete with offshore jurisdictions specialising in banking and wealth management services legitimised novel deregulation measures as a means of attracting foreign capital flows (Ogle 2017, pp. 1452–53). Initially limited, such measures – able to claim the mantle of ‘policy success’ – nevertheless paved the way for expansive rounds of finance capital-empowering deregulation, especially as the labour-empowering industrial capacity of these Western nations was progressively stripped away (Winant 2019). In the Global South (except for the financialisation-privileged petrostates), in a manner contemporaneous with trust in the success of the NIEO, ‘[c]ash-strapped oil-importing developing states had turned to banks instead of sovereign lenders as previously. The result was the well-known cycle of borrowing and inability to service skyrocketing payments on loans’ (Ogle 2017, p. 1452). These ripple effects of financialisation (and their diffusion of measures developed in offshore tax havens) spoke to a grave inability to salvage trust in building ever more robust social welfare states in both the Global North and Global South (Emery 2019; Eslava and Pahuja 2020, pp. 124–25). These dynamics were

brought to an entirely new level as geopolitical developments further expanded this systemic logic of neoliberalism as the 1970s gave way to the 1980s.

With Margaret Thatcher coming to power as UK prime minister in 1979 and Ronald Reagan assuming the US presidency in 1981, the long-standing Anglo-American ‘special relationship’ cast itself as chief protagonist in reconciling, and championing, the contradictory interplay of free market capitalism, national pride and imperial nostalgia under the rubric of trust in their leadership (Krieger 1986). Launching a ‘Second Cold War’, Reagan, with the backing of Thatcher, resumed active confrontation with the Soviet Union in a manner that asserted disciplinary power over the rest of the industrialised capitalist world, especially those who benefited from 1970s ‘thaw’ in Cold War animosity – namely Japan and West Germany (Saull 2007, pp. 156–60). Here, Reaganite tax reduction policies created a ripple effect where, whatever effect this might have had on their social welfare states, other industrialised capitalist economies faced immense pressure to adopt similar measures to maintain any degree of competitiveness (Swank 2006). Cumulatively, this expansion of untaxed capital fed immensely into globalised systems of finance that, in great measure, were filtered through tax havens at various levels (Shaxson 2011, p. 77).¹⁰ Simultaneously, this neoliberal capitalist discipline over the core coincided with its enactment with far greater intensity over the debt spiral that entrapped nations of the Global South.

As the Third World crisis sharply manifested in 1982, an event made apparent through Mexico’s default on its sovereign debt, plans and proposals to implement the NIEO were no longer workable (Thornton 2018, p. 407). Rather, in this era came the infamous ‘shock therapy’ implementations of structural adjustment via the International Monetary Fund whose loans – and thus clearance of debts with private lenders – came attached with stringent conditions for privatisation and deregulation (Kennedy 2006a, pp. 128–50; Roos 2019, pp. 137–46). For wealthy individuals within these Global South societies who feared increased taxation by states already under immense obligations to service loans to the international financial institutions in order to guarantee the prospect of future loans, the global network of trust-facilitated tax havens enabled, and continues to enable, vast amounts of capital flight from these societies (Nasirumbi 2021). This result is painfully ironic given how these same tax havens took on much of their modern character as an offering of security to colonialism’s fleeing beneficiaries who were determined that their property would never serve the end of post-colonial state-building (Ogle 2020).

With the transnational usage of offshore trusts vastly expanding in this context came calls to harmonise the law of trusts via international treaty. After all, given the particularity of trusts as a product of Anglo-American common law jurisprudence, courts in jurisdictions that did not recognise the common law trust, or any easily comparable equivalent, were liable to face immense challenges when adjudicating issues – especially in the context of succession – when nationals in their jurisdictions were the beneficiaries of properties held in offshore trusts (Hayton 1987). The result was a grand harmonisation of rules via the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition that went into effect in 1992. Since then, it has only attracted a limited number of adherents in the form of ‘UK, Italy and Australia ... Canada (but not in Ontario or Quebec) and the offshore trust jurisdictions of Bermuda, British Virgin Islands, Gibraltar, Guernsey, Isle of Man, Hong Kong, Jersey and the Turks and Caicos Islands’ the ‘British Antarctic Territories, the Falkland Islands, Montserrat, St Helena, South Georgia and the South Sandwich Islands’ as well as ‘Liechtenstein, Luxembourg, [t]he Netherlands, Malta, Monaco, San Marino and Switzerland’ (Hayton 2016, pp. 1–2). In light of the larger structural forces detailed above, the Hague Trusts Convention can be read as something of a ‘successful failure’ that, despite facing limits in diffusing widespread adoption of the common law trust in non-common law systems (Dyer 1999), nevertheless coordinated secretive legal innovation in locations that have

¹⁰While, seeing the potential for drug money laundering, the Reagan administration attempted to crack down on Caribbean tax havens through trade incentives, offshore financial services nevertheless greatly expanded here in this era (Sharman 2006, pp. 21–23).

long served as destination points for capital flight at the expense of what might be socially redistributed at its point of origination (Shaxson 2011). Such measures went hand in hand with innovations in varied hubs of global finance, themselves often jurisdictional experiments in deregulated enterprise (Slobodian 2023), where the increased use of tax havens became cornerstones of legal and financial strategy (Dörny 2025).

While its proponents have bemoaned the lack of wider accession to the Hague Trusts Convention, especially in jurisdictions sceptical of how recognition of trusts might impact their overarching legal systems, said proponents typically do not account for how the Convention can be viewed as unifying practice among the world's most infamous tax havens. In the words of David Hayton (2016, p. 24), the UK's representative in the negotiation of the Hague Trusts Convention and former judge on the Caribbean Court of Justice that inevitably faces a multitude of trusts-related legal questions: 'I fear many States have a prejudice against trusts derived from scandalous instances of abuse of trusts by some dishonest politicians, businessmen and fraudsters, while feeling that they can muddle through with things as they are. On the proper understanding of the Trusts Convention . . . no harm can come, only good'. While likely sincere in his belief, this demonstrates how attempts to understand the global dimensions of trust through recourse to the parameters spawned by an internal view of private law are bound to be interpreted with ample cynicism. While Hayton (2016, p. 24) depicts joining the Convention as presenting opportunities 'to provide structures for caring for physically or mentally disabled citizens, for developing wealth or family dynasties of socially and economically aware descendants and for providing more investment attractions for citizens and foreigners', the broader history of the offshore trust as that which undermined the ability to place trust in the sovereign nation-state in the long aftermath of decolonisation complicates this narrative to put it mildly. If these complexities were to be condensed into a single question, perhaps it would be: 'whose trust matters?' Any effort to address this question would do well to consider how, in the years immediately following the Hague Trusts Convention, the trust-fuelled global legal-cum-financial infrastructure underwent another dramatic round of transformations as the Cold War came to an abrupt end.

6 Popular trust, post-socialist capital flight and the rise of 'anti-corruption'

The collapse of state socialism in Eastern Europe and then in the Soviet Union between 1989 and 1991 inaugurated a profound transformation in political economy, as societies were rapidly reoriented from centrally planned economies toward liberal market capitalism. While many framed this development through the lenses of hope and possibility for the average person (Klare 1991), the material terms of 'hope' and 'possibility' could not be decoupled from transnational capitalist forces whose abilities to profit from large-scale political transitions were rigorously honed through responses to Afro-Asian decolonisation and its aftermath. Rhetorically framed as 'modernisation' and an 'inevitable' turn toward market capitalism, the transitions were driven not only by the disintegration of the socialist order but also by the (global) ascendancy of neoliberal policy prescriptions that recast the state from a direct organiser of production into a guarantor of private property rights and facilitator of private enterprise, market integration and investor confidence. International financial institutions such as the IMF and the World Bank conditioned urgently needed loans on 'shock therapy' democratic reforms – rapid price liberalisation, the dismantling of state subsidies and sweeping privatisation of state-owned assets (Burawoy and Verdery 1999). The process was uneven and produced new forms of dependency on international capital flows, entrenching patterns of peripheral integration into global capitalism (Kennedy 1991; Gagyí and Slačálek 2021). What was imagined as the very moment of democratisation was in effect accompanied by a contraction of national (economic) sovereignty, as policy autonomy was subordinated to the conditionalities and structural imperatives of global financial institutions.

Key to this violent insertion of post-socialist countries into the global capitalist system were the processes of mass privatisation each of them underwent. Aiming for a rapid transfer of state-owned assets into private hands, the countries of the region simultaneously dismantled their ‘overblown’ states. Some implemented voucher privatisation schemes – citizens could purchase vouchers at a nominal price to exchange for shares in state enterprises or invest via Privatisation Investment Funds. Others implemented what came to be known as shock therapy – privatisation via direct sales and restructuring aimed at decoupling from the nomenklatura. Across the region, privatisation was inseparable from the wider rollback of the state, as governments dismantled ministries, planning agencies, industrial subsidies and curtailed social protections, effectively redefining the state as a guarantor of property rights and macroeconomic stability rather than as a direct economic actor (Stark and Bruszt 1998; Bohle and Greskovits 2012; Gagyi and Slačálek 2021).

The mass and insider-friendly privatisations commonly enabled asset stripping, with funds and assets moved to offshore jurisdictions and sometimes ‘round-tripped’ back as foreign investment, entrenching private control while eroding the state’s fiscal and regulatory capacity (Black *et al.* 2000, pp. 1750–51; Ledyeva *et al.* 2013). More broadly, capital flight surged across the former Socialist East during the transition as rapid liberalisation and weak enforcement of property and securities law created strong incentives to externalise wealth. Cross-country estimates for Central and Eastern Europe show persistent, sizable outflows through 1996–2009 (often financed by domestic borrowing) depressing domestic investment and tax revenues (Brada *et al.* 2013). In Russia, the scale was exceptional: IMF and EBRD analyses attribute very large 1990s outflows to macroeconomic instability, fragile banking and low policy credibility (alongside episodes of crisis), with most analysts emphasising capital flight as a symptom of institutional weakness (Buiter and Szegvari 2002; Loungani and Mauro 2001).

In their modern iteration, trusts are a creature of Anglo-American law, and so are not recognised by most post-socialist countries. In addition to the general lack of fluency in distinctly common law modes of legal reasoning in the region, as Istvan Sandor (2015) has shown through a study of six post-socialist legal systems, the lack of complete reception of the common law trusts was linked to how this instrument’s protection of the anonymity of absolute asset owners carried with it so much potential for abuse. According to Sandor (2015, p. 148), ‘it is understandable that legislators do not want to release this new legal arrangement in the economy like an unruly bronco’. However, especially given how post-socialist legal restructuring hinged on integration with global markets, this minimal adoption of trusts at the domestic level did little to shield these nations from the transitionally constituted operation of trusts as vessels for capital mobility and hoarding. After all, offshore jurisdictions, including those party to the Hague Trusts Convention of 1985, offered precisely the flexibility and anonymity needed to veil the transformation of collective assets into private fortunes. In the legal grey zones of the British Virgin Islands, Jersey and other offshore financial centres, trusts became essential tools for converting the spoils of privatisation into untouchable private wealth out of the reach of national regulators, beyond the scrutiny of the publics from whom this wealth had been extracted.

Over the course of the transitions, some of the region’s major politicians, media and banks were regularly implicated in corruption scandals involving offshore structures that obscured ownership and diverted funds. These structures include shell companies and trusts and add layers of legal insulation that make public and regulatory oversight nearly impossible. Unlike their Western counterparts, economic actors of the region did not use these legal structures mostly to merely evade taxes (income and corporate tax across the region are already exceptionally low), but primarily to create opacity around ownership and frustrate investigations into privatisation abuses. Regional studies of post-Soviet Russia show a link between corruption and ‘round-trip’ investment via offshore centres (commonly Cyprus and the British Virgin Islands): capital was exported into offshore financial centres and re-entered as foreign direct investment to disguise provenance and shelter assets from domestic scrutiny, thus protecting looted proceeds (Ledyeva

et al. 2013). The resulting patterns of capital flight, hidden ownership and concentrated control in politically connected actors all undermined public confidence, generating widespread low trust in the state, in economic actors and in institutions more broadly. The irony, of course, is that while corruption discourses paint Eastern Europe as a zone of institutional failure and moral deficit, these mechanisms of looting were enabled not by local legal traditions but by the most sophisticated instruments of Western (Anglo-American) common law. Post-1989 capital flight was largely administered by Western wealth management firms, operating in jurisdictions that style themselves as the very epitome of rule-of-law respectability.

While trusts as legal devices allowed elites to hide wealth and evade accountability, trust in the interpersonal sense – trust in institutions, in the state, in one's fellow citizens – was undergoing catastrophic erosion. This dynamic is no coincidence. The post-socialist transition was a wholesale reorganisation of property relations under conditions of legal globalisation. As we showed above, the enclosure of public wealth was not accomplished through crude theft alone, but through access to transnational legal forms – trusts, foundations, offshore companies – that ensured these accumulations could be made invisible and immune to redistribution. Meanwhile, the popular language for explaining these processes became fixated on the trope of corruption.

For two decades now, post-socialist political elites have been obsessed with corruption – a will to do away with corruption as an absolute priority has been essential to party programmes across the region's states. The anti-corruption crusade was led by international organisations such as the IMF and the World Bank starting in the 1990s. Anti-corruption became a new tool to revitalise the discredited Washington Consensus, particularly amid pressure from conservative circles in the United States to close the World Bank or at least minimise its role (Krastev 2004; Naím 2000). International business players joined the global anti-corruption campaign in search of a level playing field in the newly post-colonial and post-socialist world of costly barriers imposed by local governments (Bratsis 2014; Krastev 2004). As Ivan Krastev shows in his book *Shifting Obsessions* (2004), the international campaign against corruption involved a shift in the way it was conceptualised: instead of seeing it as a political and cultural phenomenon that manifests differently across contexts, it became a pathology of an otherwise rational (universal) individual that could be addressed with one-size-fits-all policy solutions. From a political problem, corruption was reinvented as an economic one. This also opened up the space to argue for positioning corruption as an institutional problem that also turned into an argument against the interventionist state. If it is (big) government that corrupts, it is the withdrawal of big government from the economy that was the most logical anti-corruption task. Following the 1990s, the World Bank simultaneously adopted an ordoliberal stance: functioning markets depend on strong, well-governed states and 'the rule of law' (Krever 2011). In Krastev's words, if corruption is the 'black myth' of transition, the rule of law is its 'white myth' (2004, p. 44).

Some have called this a 'judicialization of politics' (Hirschl 2006) with the trope of 'rule of law' gradually becoming a *sine qua non* of politics of the region. The pervasive obsession with the 'rule of law' has functioned to convince East European publics that legal reforms (at the level of the nation-state) and anti-corruption programmes will protect the judiciary and human rights from authoritarian threats and guarantee a safe and stable 'investment climate' for business (Nikolova 2021). The anti-corruption and rule-of-law discourse has come to act as a kind of moral alibi for neoliberalism in Eastern Europe: it frames political and economic failure not as a consequence of the violent insertion into global capitalism, but as the result of local pathologies – the venality of officials, the backwardness of legal institutions, the supposed cultural defects of the region.

In this sense, anti-corruption discourse played for the Second World a role analogous to what human rights discourse played for the Third World as part of the neoliberal turn. In both cases, the language of moral universalism and formal legality displaced demands for material redistribution and sovereignty. In both cases, these discourses legitimised and obscured legal infrastructures of dispossession. Like human rights discourse, anti-corruption discourse isolates dysfunction from its global politico-economic context, identifying 'corrupt elites' rather than

uneven development, class restructuring or geopolitical subordination as the core problem to be solved. This shared depoliticising logic allowed both discourses to justify post-Cold War governance reforms while delegitimising alternative developmental trajectories. The parallel is not incidental – both frameworks re-articulate political contestation into moral crusades. In Eastern Europe, anti-corruption campaigns are often animated by a semi-Orientalist logic: the East, it is said, remains mired in patrimonialism, cronyism and institutional dysfunction, while the West represents the telos of rule-of-law modernity (Kennedy 1991). But the tools for looting – the trusts, shell companies, wealth management consultancies – originated in Western law. Yet, the moral imperative of the anti-corruption campaigns serves less to challenge the legal mechanisms of dispossession than to entrench faith (trust?) in Western institutions, while deepening cynicism toward local ones (Kennedy 1999). In a supreme irony, the legal instrument of the trust is premised on the steadfast safeguarding of personalised bonds of loyalty and patronage – the same features typically viewed as endemic features of non-Western societies that, if progress and development are to be realised, must yield to the innate rationality of Western rule of law and institutionalism.

It is no accident that popular imaginaries across the former Socialist East often describe politics as governed by (in Bulgaria) a *задкулисие* – a backstage, a realm of hidden puppet masters anonymously pulling the strings. It is a metaphor that captures the opacity of political and economic decision-making broadly, but also the structural invisibility produced by the legal devices of offshore capitalism. Trusts and similar forms function precisely by making ownership, control and benefit opaque. And in doing so, they contribute to a political culture in which the formal structures of democracy are seen as little more than a facade for concealed power. While political debate became obsessed with the failures of the former East's states, with their corruption, ersatz rule of law and inability to command trust, the very infrastructures that enabled elite enrichment were global, legal and perfectly 'respectable'. The trust, in both its legal and social senses, thus stands as a telling emblem of the post-1989 order: a device for enclosing wealth and eroding solidarity, a legal form that turned global capitalism's inequalities into something both lawful and unchallengeable.

7 Conclusion

The above-detailed genealogy of how trusts as transnational juridical mechanisms play an important role in undermining domestic political trust in a world defined by rampant inequalities is perhaps best concluded where it began – with the observations of Roger Cotterrell. Writing in the 1980s moment of unapologetic neoliberal 'shock therapy' where the envisioned standardisation of trust law was presented as a means to this end, Cotterrell (1987) presciently depicted just how much the law of trusts challenges the core precepts of liberal legal and political philosophy. In his account, despite widespread notions that free and equal subjects are empowered to build institutions for collective uplift limited only by their imaginations and consent, the existence of trusts and the relations of power-property they engender profoundly challenges such liberal visions as an exercise in what Susan Marks (2009) deemed 'false contingency'. As Cotterrell (1987, pp. 83–87) has detailed, it is through the trust's ability to trans-generationally and transnationally direct personalised obligations in relation to ever-shifting assets that relations of hierarchy, vassalage and privileged secrecy over matters of public concern that defined feudal social relations can continue to define an ostensibly post-feudal society premised on liberal equality.

The postwar premise of a world of autonomously empowered sovereign states was made to contend with transnationally constituted legal mechanisms furthering relations of intervention and dependency that, in varying measures, preserved the inequities of colonial rule or invented fundamentally new forms of domination. With the ascent of finance capital sharpened by Afro-Asian decolonisation and becoming nigh-incontestable with the collapse of the Eastern bloc, the

formatively Anglo-American law of trusts did much to bridge this seemingly contradictory gap between ideals of equality and realities of hierarchy. Read in this light, the law of trusts emerges as a key moment in the reorganisation of sovereignty under late capitalism. It allows private actors to secure certainty and continuity at a time when collective political projects are rendered untrustworthy and the power of nation-states is reduced to facilitating the logic of the dominium. The resulting erosion of popular trust in the face of finance capitalism has spawned no shortage of violence and impropriety within and across numerous societies. However, efforts to address these pathologies via legalistic campaigns in the name of international human rights and/or anti-corruption have fixated on the nation-state and largely resorted to moralistic or old 'civilisational' tropes centred on who was or was not worthy of statehood in capacities that ignored, minimised or even celebrated the same transnational forces that erode localised social trust across post-colonial and post-socialist worlds (Anghie 2006). Confronting such conceptual shortcomings in reference to Cotterrell's (1998) call that legal ideas must be interpreted sociologically, our assertion has been that those concerned with the uneven geography of trust must be critically prepared to discuss the uneven geography of trusts.

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