

## Fordham Law School

# FLASH: The Fordham Law Archive of Scholarship and History

---

### Faculty Scholarship

---

2017

# The Futility of Law and Development: China and the Dangers of Exporting American Law

Martin S. Flaherty

*Fordham University School of Law*, [mflaherty17@yahoo.com](mailto:mflaherty17@yahoo.com)

Follow this and additional works at: [https://ir.lawnet.fordham.edu/faculty\\_scholarship](https://ir.lawnet.fordham.edu/faculty_scholarship)



Part of the [Law Commons](#)

---

### Recommended Citation

Martin S. Flaherty, *The Futility of Law and Development: China and the Dangers of Exporting American Law*, 104 J. Am. Hist. 163 (2017)  
Available at: [https://ir.lawnet.fordham.edu/faculty\\_scholarship/860](https://ir.lawnet.fordham.edu/faculty_scholarship/860)

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

Bothwell. (New York: Oxford University Press, 2015. xii, 420 pp. \$34.95.)

In January 1942 Canadian prime minister William Lyon Mackenzie King issued orders for the removal of all persons of Japanese origin from a designated protected area one hundred miles inland from the British Columbia coast. Those removed were sent to internment camps in Alberta. Significantly, U.S. president Franklin D. Roosevelt issued his infamous Executive Order 9066 on February 19, 1942—after the Canadian orders. This was a moment that reflects the promise of Robert Bothwell's *Your Country, My Country*.

Unfortunately, Japanese internment is not mentioned in the book. Rather than a true “unified history of the United States and Canada,” Bothwell has produced a straightforward, well-written survey of Canadian-American relations since the eighteenth century. From the first sentence Bothwell makes clear that the volume will address relations between Canada and the United States; indeed, the phrase “Canadian-American relations” appears three times on the first page. Along the way, however, are also promises to address “comparisons of Canadian-American values, and discussions of Canadian-American differences,” but such references are spotty (p. 3). In the last chapter, “Back to the Future?,” Bothwell attempts to assess Canadian and American similarities and differences in the twenty-first century, but inevitably he comes back to Canadian-American relations. In the free-flowing conclusion to the book Bothwell contemplates points of convergence and divergence between the two countries, coming to the predictable conclusion that both countries have some transnational characteristics yet remain unique sovereign entities.

The rest of the book is organized chronologically, with a distinctly Canadian point of view. And since for most of the book Canada is part of the British Empire, Ottawa's and Washington, D.C.'s relations with London receive much attention. The chapter on relations during World War II, “Convergences, 1939–1949,” is a good example. King and his British counterpart, Winston Churchill, are the main characters, with little reference to President Roosevelt. Since, as Bothwell notes, “the Unit-

ed States had a New Deal, and Canada did not,” this fundamental fact of 1930s America goes largely undiscussed (p. 195). This is true for most major events in American history, from the Civil War to the civil rights movement: issues without a Canadian parallel are not discussed.

The book's unfortunate subtitle raises a question: What would a true, “unified” history of North America look like? “Do Borders Matter?” was the theme for the 2004 conference of the Organization for the History of Canada. Some of the seventy papers given were collected by the editors Michael D. Behiels and Reginald C. Stuart into a 2010 volume, *Transnationalism: Canada-United States History into the Twenty-First Century*. Topics in it range from history, politics, and foreign relations to sociology, geography, and culture. While Bothwell's book updates the older works of C. P. Stacey, Charles C. Tansill, and others, and treads some of the same ground as Stuart's *Dispersed Relations: Americans and Canadians in Upper North America* (2007), we will likely need to wait some time for a true “unified,” transnational history of the two North American neighbors.

Edward P. Kohn  
Bilkent University  
Ankara, Turkey

doi: 10.1093/jahist/jax011

*The Futility of Law and Development: China and the Dangers of Exporting American Law.* By Jedidiah J. Kroncke. (Oxford: Oxford University Press, 2016. xiv, 358 pp. \$74.00.)

The American Bar Association (ABA) accorded the Chinese lawyer Wang Yu its first International Human Rights Award in 2016. The award recognized Wang's bold pursuit of Chinese women's rights through the courts—work partly inspired by civil rights advocacy in the United States. In China, however, her efforts resulted in a different kind of recognition: detention, mistreatment, and retaliation against her family. In these ways she was only the most well known of hundreds of Chinese legal advocates who have suffered under a brutal crackdown in the last several years under

Xi Jinping. Not only could Wang not travel to receive the ABA award in person, but she repudiated the award in a video that nearly every observer outside the Chinese government believed was coerced.

As the book's title implies, the upshot of Jedidiah J. Kroncke's *The Futility of Law and Development* is that the ABA should have remained silent. Or, at the very least, the ABA and other American nongovernmental organizations, universities, and law schools should not waste their time trying to train, support, and work with lawyers such as Wang. The book's conclusions are not just needlessly tendentious; they also mar what is otherwise a superb and pioneering work of history by drawing modern lessons that violate the historical precepts that make the rest of the work superb.

*The Futility of Law and Development* comes to its necessary prescriptions brilliantly. The book offers perhaps the most comprehensive account of American attempts to export U.S. law to China. These efforts, Kroncke argues, are best characterized as noncolonial (U.S. legal advocates did not seek to colonize China in any conventional sense); reformist (in attempting to ameliorate perceived deficiencies in the Chinese legal system); and missionary (in presupposing the superiority of American over Chinese law in much the same way Christianity necessarily eclipsed Chinese religion as a key to bringing progress to the Middle Kingdom). From the early nineteenth to the mid-twentieth centuries, Kroncke shows, legal and religious missionary activity overlapped and were mutually reinforcing.

Kroncke tells this story with rigor and nuance. He provides insightful accounts covering, among other subjects: the Jesuits, the American Founders, obscure characters known only to China or legal history specialists, noted figures such as Elihu Root, Woodrow Wilson, Roscoe Pound, Henry Luce and the China lobby, and assorted cold warriors.

Kroncke's presentist conclusions, however, undercut his historiographical achievement. Kroncke asserts that the self-defeating missionary approach lasted through the twentieth century and dooms reform efforts to this day. He acknowledges, but does not successfully grapple with, the secularization of legal reform that began even before World War II.

He barely acknowledges the nearly complete destruction of the Chinese legal system during the Cultural Revolution. And he simply caricatures the work of modern legal reformers.

Consult, therefore, Kroncke's fine monograph not for its misguided modern policy prescriptions but for its valuable pathbreaking historical account.

Martin S. Flaherty  
Fordham Law School  
New York, New York

doi: 10.1093/jahist/jax012

*Arms Races in International Politics: From the Nineteenth to the Twenty-First Century.* Ed. by Thomas G. Mahnken, Joseph Maiolo, and David Stevenson. (New York: Oxford University Press, 2016. xviii, 302 pp. \$100.00.)

Each chapter of this well-conceived and informative volume examines the forces that cause and sustain arms races, and the relationship between arms races and the outbreak of wars. Each chapter also draws on the three explanatory models suggested by the volume's editors: technological imperatives, domestic politics, and the action-reaction cycle. Starting with the Anglo-German naval race that preceded World War I and terminating with post-Cold War "arms competitions" linked to the growth of precision-strike systems, the book's twelve case studies converge on the conclusion that the events under scrutiny here are sufficiently unique that they mitigate the formulation of any broad theoretical generalizations. The assertion that the Cold War arms race is not amenable to theoretical explanation because of its "anomalous character" effectively applies to the arms races preceding the two world wars and those that developed after the Cold War (p. 99). Fortunately, while the volume contributors start with the editors' proposals, their analyses go well beyond them.

We learn that the idea of an arms race is suspect, as it represents an extreme and uncommon extension of more general arms dynamics and somewhat more specific arms competitions. The recent effort by China to build up its military capacity, a development that has attracted considerable concern, is sig-