Rage for Order : The British Empire and the Origins of þÿ I n t e r n a t i o n a l L a w , 1 8 0 0 1 8 5 0 , w r i t t e n b y L a u r e n Lisa Ford

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Lauren Benton and Lisa Ford

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The histories about the origins of international law can be traced back to the fourth century BC, if we rely on C. H Alexandrowicz' writings that glean from the *Kautilyan* principles of the *Arthashastra* in its pronouncement of inter-state conduct and measures of foreign policy.[1] Other scholars have often drawn from modern legal theory in order to sketch the genealogies of international legal discourse.[2] Benton and Ford, on the contrary, rather than searching for the origin of (principles of) international law as their subtitle suggests, 'identify patterns of regional and global law that derived from the British Empire's partial and Pyrrhic efforts to order the world' (p 181). The shift in the approach puts the spotlight on the 'debilitating intricacies' of the legal strategies and mechanisms of the Empire, which is mostly neglected in big histories. When Britain began raging for order, what it achieved in reality was to install the empire as 'the ghost in the machine of global governance' (p. 1). Benton and Ford treat this as the foundational basis upon which they map the multifarious contestations by the British towards establishing their power and worth within the global order.

While several books engage with legal ordering, they often limit their focus to specific events, leaving in academic scholarship a void of the centrality of law in the making and remaking of

[1] Alexandrowicz, C.H. *The Law of Nations in Global History*, eds. David Armitage and Jennifer Pitts (Oxford: Oxford University Press, 2017), 41.

[2] Fitzmaurice, Andrew. *Sovereignty, Property and Empire 1500-2000* (Cambridge: Cambridge University Press, 2014); Anghie, Anthony. *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

empire[3], which is the unique standpoint this book provides. It demonstrates how when we 'place law at the centre of the story of global transformation and examine early nineteenth-century imperial legal conflicts inclusively and extensively, we arrive at new and different understandings of empire and world history' (p.3). Yet, the authors establish that the discussions about the global order cannot be found in the 'law school and halls of diplomacy', because the formation of the imperial legal order often took place 'in the course of mundane jurisdictional disputes arising in and on the boundaries of empire' (p.5). Unlike intellectual histories that have been pivotal in the turn to history in international law, the authors find the letters of colonial officials, the arguments of indigenous elites or the legal strategies of seemingly powerless subjects in empire much more telling of the visions of the early nineteenth-century imperial constitution (p.10). Through these ordinary and outwardly insignificant actors the authors bring out a capacious narrative. Even amongst these less grandiose tales, the authors are careful to remind that the archives are rife with self-serving truths and biases, which themselves are generative and significant to the story. Benton and Ford draw from the interstices of the British Empire and the role played by subjects 'with deeply restricted legal standing (convicts, slaves, and former slaves)' (p.70) and middling officials (judges, commissioners, colonial officers). Emphasising the role played by these groups in the moment of imperial reordering, the authors bring about a non-elite history

[3] For example, the authors refer to Bayly, Christopher. *Imperial Meridian: The British Empire and the World, 1780-1830* (London: Longman, 1989) and Bayly, Christopher. *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1999) as books that were landmarks in the field of history, but sidelined the role played by legal change in the empire. Similarly, books like Travers, Roboert. *Ideology and Empire in the Eighteenth Century India: The British in Bengal, 1757-93* (New York: Cambridge University Press, 2007) and Lester, Alan and Fae Dussart. *Colonization and the Origins of Humanitarian Governance: Protecting Aborigines across the Nineteenth Century British Empire* (Cambridge: Cambridge University Press, 2014) represent literature that deals with the legal effects of the empire, but focuses on specific issues like the Warren Hastings' Trial and the case of the aborigines respectively.

using sources that are scattered and often pedestrian, in an effort to reveal exactly that: the uneven influence of the British Empire on colonial jurisprudence. The findings tell a known story, of legalities that were formed within the empire (p.12) but were projected outside of it, in order to make assertions about the 'proper parameters of regional and global order' (p.21). Through the different chapters, the authors introduce the various facets of this legal ordering.

In the second chapter the authors show how the role played by despots like the Crown-appointed governors in the dominions, led to an increasing autocracy of the Crown (p.50). Using the example of Trinidad, which was an important site for British legal experimentation, it becomes evident that Crown rule was used as a weapon to fight slavery, which abolitionists like James Stephen believed was corrupting 'not only masters, but British institutions of governance' (p.50).[4] At the same time, although anti-abolitionist MPs like Joseph Marryat called for introducing the British Constitution and British laws into the island, it was considered disgraceful by those of the likes of MP Henry Brougham who thought transplanting English law without transplanting the 'true English feeling' (p.51) was a real mockery. Thus while the anomaly of introducing the idea of free government into a society that composed of master and slave was evident to those who attempted to bring about parliamentary reform, the authors leave out an important dimension: the privatisation of the master's rule as a possible (undesirable) effect of Crown rule which turns the dastardly subordination of masters to imperial authority into only one of the many eventualities.[5]

[4] Stephen, James. *The Crisis of the Sugar Colonies* (London: J. Hatchard, 1802)

[5] See Nyquist, Mary. *Arbitrary Rule: Slavery, Tyranny and the Power of Life and Death* (Chicago: Chicago University Press, 2013).

The third chapter discusses the intricacies of an office that was created in many of the self-governing colonies: the commissions. From the erstwhile chief justice of Trinidad, Thomas Bigge, to the mastermind behind the codification of India's laws, Thomas Babbington Macaulay, to the jurist John Austin, parliamentary commissions of enquiry under their leadership were sent to New South Wales, India, Malta and the Caribbean. Even if there are myriad histories written about these colonies[6], the role of the commissioner, as the authors put it, is a 'grossly understudied constitutional moment' (p.59). Acting as the royal fact finders, the commissions inserted the king into the conflicts among colonial publics, courts and governments. In essence, the commissions increased the extent of the crown's intervention into self-governing colonies—a measure that very cleverly created a pall of the British desire for doing justice over the immense power they could continue to wield.

The ambivalence of the British measures becomes most evident in the fourth chapter, focusing on the 'Promise of Protection', which immensely helped to legitimise the British Empire. The authors sketch the ambiguities of protection—whether signalling alliance or submission or something in between—which gave the protecting powers the greatest strategic benefits. Colonialism when wrapped in the garb of protection became excusable by international law. While Antony Anghie searched into early modern legal theory to find the origins of international law's colonialist underpinnings, the authors continue to look where

[6] See Ford, Lisa. *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge: Harvard University Press, 2010); Chatterjee, Partha. *The Black Hole of Empire: History of a Global Practice of Power* (Oxfordshire: Princeton University Press, 2012); Candlin, Kit. *The Last Carribbean Frontier, 1795-1815* (London: Palgrave Macmillan, 2012).

international lawyers never do—in the colonial practices of the governors and commanders in the various British settlements like Ceylon and Ionian Islands, in the communications between them on the roles of the Provincial Courts and the extent of authority the governors must wield on judicial matters. Such 'middle power' helped define the British legal order over native subjects in British territories (p.93) through extending the jurisdiction of the British judiciary. Relying on the language of protection to intervene—today called the Responsibility to Protect doctrine under international law—allowed the British Empire to promise 'shelter from enemies' (p.89) in disputes among other polities and also internal contests about bringing about order amongst the marginal people. Through protection measures, Benton and Ford describe far-reaching effects of the jurisdictional scope of the British Empire, enabling the much debated relationship between intervention and security[7], rooting their history in the relatable machinations of the micro-powers that lies in the gaps between the powerful.

Moving beyond the liberal project of abolition of slavery in the previous chapters, the fifth chapter enters unchartered waters—of piracy as an important imperial tool (p.132). Benton and Ford examine how the flexibility of what piracy entailed enabled a spectrum of activities that protected corporate and imperial interests: from violence to policing measures. The piracy-enabled imperialism also behooved the separation of slave trading from piracy (which was later conflated in 1818) where the former was not considered a crime in the law of nations unlike the latter. 'The British navy was responsible for more than 95 percent of

[7] Anne Orford, much like Antony Anghie, relies on the theoretical histories of protection to describe the emergence of the R2P doctrine under international law today. Orford, Anne. *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011).

the seizures' (p.125), and yet to some extent the limits of the British power to set international norms against slavery were evident through the Portuguese exemption, where despite the abolitionist bilateral treaties, the slave traders from Portuguese colonies were allowed to flourish. Benton and Ford blame the procedural and ideological gaps in the British prize law for this sketchy system, while they on the other hand attribute to the same laws the rise in the blatant form of legal imperialism (p.125) that no longer feigned humanitarianism.

Through the sixth chapter, Benton and Ford give thrust to the thread running through their book—of jurisdiction being at the heart of the issues of order and rule. Relying on the emergence of new regional formations and new nation-states, the authors link the British support for the autonomy of weaker states to the extension of British jurisdiction through a 'diffused imperial presence'. This link helps us understand how British policy found new weak sovereigns upon whom their commercial empire could depend by restricting regional hegemons through imperial notions of divisible sovereignty that backed the self-determination of smaller political communities (p.179). This illustrates the 'commercial and political considerations' of the British Empire's legal strategies.

The final chapter embeds the idea of order in the 'Great Disorder' of the British Empire as the driving force of the imperial legal order. Characterised by the inside and outside legality of the Empire, the chapter concludes by taking note of how legal authority travels—'through naval policing, modified admiralty law, the annexation of new territories, diplomatic pressures on other polities to adopt British-favoured legal positions and extraterritorial

jurisdictional gambits' (p.180). Relying on measures and processes that, even if hidden, reveal some of the most important influences of the British imperial legal order, the authors contemplate its 'limits, violence and gaps'. Adding nuances to the earlier chapter on the power of despots, in the final chapter the authors also bring to fore their limits in an attempt to lay bare the instability of the Empire through its middling officials. Taking stock of the voices 'from below', the authors also give agency to the slaves in Mauritius and Trinidad who sought justice in British courts, and the convicts in New South Wales who petitioned to curtail specific punishments to recast the system of convict labour. These challenges to the British Empire was of no little significance, as shown by the authors through two very consequential cases—the Morant Bay rebellion in Jamaica in 1865 and the Manipur revolt in India in 1891—not because they reinforced the imperial legal framework, but more because they 'sharpened the divide between inside and outside legalities' (p.188).

The dynamic between the inside and the outside remains a depiction that allows us to imagine the empire as the global legal order—where the outsiders are found wanting of the required 'standard of civilisation'. Yet, that the rage for order mobilised forces both inside and outside the empire is evidence of the power in redesigning the law. From the colonial authorities to the *miserables,* they all played important roles in shaping the structures of empire and its legal order. The method of imperial ordering, the authors note, was not easily describable as being only complicit in the despotisms of the colony; they were equally proponents of liberal reforms. It was this entanglement that made them palatable to the colonies. Contrasting the complexities of the colonial reforms with the simplicity of the distinctions they gave rise to, bowdlerised the intricacies of legal capacities into dyadic

oppositions like convicts and freed convicts, slaves and liberated slaves (p.127). Thus while the calls for reforms deceptively appeared banal, they were put into place towards the desire for a 'better empire', that nonetheless would be a site of legal plurality. The book adds a significant viewpoint to the study of colonialism, especially of the British Empire, in addressing its schizophrenia whilst admitting to its beguiling desire for an unachievable order. But the book's biggest virtue lies in its disarming portrayal of the less audible voices and the challenges they posed to the Goliath of the story. When Dipesh Chakrabarty provincialised Europe[8], he created the space for micro-histories; Benton and Ford allow the unknown actors to come out of the woodwork in their macro-history.

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[8] Chakrabarty, Dipesh. *Provincializing Europe* (Oxfordshire: Princeton University Press, 2000).