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Jenny S. Martinez. *The Slave Trade and the Origins of International Human Rights Law.* Oxford: Oxford University Press, 2011. 264 pp. $29.95 (cloth), ISBN 978-0-19-539162-6.

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Rewriting the Origins of Human Rights Law

To punish the Nazis for their crimes and forge laws to define, codify, and prevent future atrocities, the victors of World War II practically fashioned human rights law from scratch. In a short period following the war, a series of international tribunals successfully prosecuted criminals for human rights violations. At the same time, the United Nations Charter, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, and the Universal Declaration of Human Rights emerged as starting points of a global legal regime. Together, these awesome and unprecedented endeavors formed the foundation of international human rights law.

During the past few decades, this account of the origins of international human rights law has largely gone unchallenged with only a few other sources creeping into the conversation: ancient texts like the Bible and Magna Carta along with the Enlightenment's Bill of Rights and the Declaration of the Rights of Man. Scholars have also pointed to the influence of natural law and other conceptual frameworks as well as the primary precursors to international jurisprudence, the Geneva and Hague Conventions governing warfare. Yet, when it comes to the establishment of international human rights law, and a judicial system set up to enforce those laws, the conventional wisdom has looked to the Nuremberg trials and the contemporaneous work of icons like Eleanor Roosevelt as the architects.

In *The Slave Trade and the Origins of International Human Rights Law*, Stanford Law School professor Jenny S. Martinez successfully shatters this popular narrative through her persuasive work of history. In place of this revolutionary epoch, she sheds light on a critical episode of human rights law largely neglected by historians. Starting in 1819, a handful of nations led by Great Britain established international judicial bodies to enforce treaties banning the slave trade. With judges from multiple nations presiding over these "Mixed Commissions" in locations on both sides of the Atlantic, they represented the first true international human rights tribunals–more than a century before Nuremberg. By the time they came to an end decades later, the commissions oversaw more than six hundred cases, freed eighty thousand slaves, and potentially saved ninety thousand others by seizing ships equipped for the slave trade. "In sheer human impact," Martinez concludes, "no other international court has directly affected so many individuals" (p. 85).

In telling the neglected story of these courts, Martinez seeks to cast aside the conventional view held by most "legal scholars" of the "post-World War II" origins of "international courts and international human rights law." Instead, she argues, "the nineteenth-century slavery abolition movement was the first successful international human rights campaign, and international treaties and courts were its central features" (p. 13). This conclusion represents the book's central purpose. And in the hands of a skillful former litigator like Martinez, who served as a clerk for the U.S. Supreme Court and a legal officer for the United Nations International Criminal Tribunal for the former Yugoslavia in The Hague, it is difficult to finish the book without being persuaded.

The story of these courts begins and ends with Britain. After abolishing slavery on British soil (eventually that ban would spread across the empire), British

abolitionists set their sights on the Atlantic slave trade. By requiring the cooperation of multiple nations partaking in the inhumane practice and the capture, prosecution, and punishment of non-state actors–the slave traders–in international waters, their pursuit collided with many of the same challenges facing human rights advocates today. Britain established an international framework of bilateral and multilateral treaties to meet these challenges. The novelty of these agreements, Martinez points out, was that unlike other international judicial bodies of that era, which had been created to resolve past conflicts, the panels were established to tackle forthcoming disputes.

Martinez spends several chapters on the successes and failures of these courts as Britain gradually expanded their use with new partners like Brazil and the United States. The challenges these courts faced–concerning their jurisdiction, procedural rules, and judicial independence as well as arguments over the basis of human rights laws, the scope of their applicability, and the enforcement of commission rulings by half-hearted participants–reverberate just as loudly today. Despite these hurdles, the courts managed to hear more than six hundred cases over a forty-five-year span, a far higher figure than the international courts established in the twentieth century. A look back to these neglected commissions therefore adds new insights to solving problems posed to the modern human rights practitioners.

Specifically, Martinez observes that nineteenth-century slave traders were, like today's terrorists, non-state actors. Ever since the attacks in September 2001, no nation has come up with a fair, workable, and consistent way to prosecute suspected terrorists. Instead, military tribunals and traditional criminal courts have applied a patchwork of new and established rules to deal with the issue. Martinez suggests that international tribunals may serve as a viable alternative to this hodgepodge.

Martinez also links the abolition of the slave trade to the expansion of human rights from the Enlightenment's concern with individual liberty in connection to authoritarian sovereigns–as espoused in documents like the U.S. Constitution–to one of universal acknowledgment of the welfare of fellow human beings, regardless of their nationality. "The idea that nations should use international lawmaking to protect the rights of individuals outside their own territory," Martinez points out, "was first put into practice with the effort to abolish the slave trade" (p. 138).

If the abolishment of the slave trade and the application of international courts served as a precursor of modern international human rights law, then why have scholars neglected this history? Martinez provides some answers to this question that rests at the heart of her book. On the one hand, because widespread participation in slavery would have tainted so many of the participants essential to the fledgling human rights regime started in 1945, it was convenient to neglect any links to the dreaded institution. On the other hand, Martinez asserts, the focus on Nuremberg allowed human rights advocates to isolate the war's atrocities to the Nazis. For many years, Martinez further adds, humanitarian intervention was used as an excuse for European colonization and imperialism. With the abolition of the slave trade and the Mixed Commissions so dependent on European powers, she argues, human rights advocates wished to "distance international human rights from European history to make it more globally legitimate" (p. 155). Plus, the vast scope and nature of the atrocities of World War II surpassed the tragedies of the past, relegating the slave trade (and other human rights crimes) to historical oblivion. Finally, Martinez argues that much of the postwar attention was on war crimes and "crimes against peace" committed by governments rather than non-state actors, like slave traders (pp. 156-157).

Martinez concedes that none of these points provide a "satisfactory explanation" (p. 154). After all, while human rights advocates may have had an incentive to overlook the abolishment of the slave trade, other chroniclers did not. Plus, as many nations came to eventually accept and acknowledge the dark episodes of their past, there was less of an incentive to hide their role in the slave trade. At the end, the only thing missing from the book is a more satisfactory resolution to this mystery. Despite this minor hiccup, *The Slave Trade and the Origins of International Human Rights Law* resurrects a key yet forgotten element of the world's quest to establish human rights. And in doing so, it begins to rewrite a well-established yet incomplete historical narrative of the origins of international human rights law.

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