

Benjamin Allen Coates. *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century.* New York: Oxford University Press, 2016. 296 pp. \$35.00, cloth, ISBN 978-0-19-049595-4.

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The United States has long had an uneasy relationship with international legal institutions such as the World Court and the International Criminal Court. It has often been in a minority refusing to ratify international treaties. The recent Bush administration stood out. It is easy to dismiss international law as insignificant in American foreign policy. In his *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century*, however, Benjamin Allen Coates disputes this seemingly inevitable conclusion, although he agrees that the United States has for the past few decades lacked a proud record of respecting international legal institutions and international law. Drawing on the literature on international law and international relations, Coates identifies two popular conceptions of international law: judicialist legalism and realism. International law means either self-enforcing universal principles or “a transparent tool for justifying atrocities” (p. 5). In either case, it is assumed that “international law and state power are antagonists” (p. 1). Coates does not altogether deny this antagonistic relationship between law and power under certain circumstances, but calls attention to a situation in which they can be mutually reinforcing. That is, law not only “constrains states by

forcing them to do something that they would not otherwise do,” but also “has often permitted the use of force” to advance national interest (p. 5). Coates therefore paints a complex picture of when US leaders followed and even moved to promote international law and when they chose to disregard it.

Coates places the United States in the larger context of the New Imperialism (1875-1914). Focusing on the years from 1898 to 1919, Coates maintains that the American empire was “in important ways a legalist one” (p. 2). Specifically, international law was “an essential component of” the rise of the United States to great power status, and international lawyers were “at the center of the effort to create and administer the American empire” (p. 2). Invoking the discourse of civilization, American legalists helped defend the new imperial power by identifying it with its European peers, which had embraced empire as a new international norm to civilize remote and backward nations. Sharing the White Men’s burden, the American empire was both sanctioned by international law and expected to help establish the rule of law in “uncivilized” nations.

Coates convincingly demonstrates that international law derives its meaning in a specific political and ideological context. Early on, the transatlantic discourse of civilization informed international law, which in turn justified the American empire. In this sense, international law shaped empire. In other words, power projection was not the prerogative of the military but also the job of international lawyers. Conversely, as Coates indicates, empire shaped international law. Empire could not become a new international norm without recourse to the discourse of civilization, which was ultimately backed by power. Indeed, international law was never divorced from power realities, which was reflected even in the establishment of American Society of International Law (ASIL) in 1906: “The secretary of state, Elihu Root, served as ASIL president, and the organization counted among its vice presidents three Supreme Court justices, three former secretaries of state, and a future US president” (p. 67). On the other hand, many international lawyers worked for the federal government, especially the State Department. Others worked with US overseas corporations. Still others continued to speak for the American empire through annual meetings and publications.

Coates is explicit that the early twentieth century was the high point of US zeal for international law. But he reveals that international law during this period was more about non-Western nations than about the Western powers, which were already assumed to be law-abiding members in the family of nations. The legalist aspect of the American empire therefore did not mean any international legal constraint on the United States. Rather, it meant constraint on non-Western nations. International law was now intended to constrain “uncivilized” nations from continuing to go their own “barbaric” way and enable “civilized” Western powers to even use force to turn them around.

One wonders how much legalism the American empire had. Coates defines legalism as “a com-

mitment to expanding the use of legal techniques and institutions to resolve international problems” (p. 3). The question is to whom those “techniques and institutions” were legal. They were surely legal to the West, considering Coates’s definition of international law as “what states have agreed it to be” (p. 17). This is clearer when Coates explains that the Western conception of international law granted full sovereignty only to “civilized” nations, not “uncivilized nations.” The so-called international law in the early twentieth century was practically European or Western law, which not only enjoyed little support from outside the West, but also met with opposition from the anti-imperialists within the Western world. Given his full admission of the limitation of international law of the time, Coates’s positive conclusion about the legalism of the American empire is a little surprising.

Legalism in *Legalist Empire* also means that the United States not only followed international law by joining the European powers in embracing empire as a new international norm, but also promoted international law on US terms. In Coates’s account, well before the Spanish-American War in 1898, the United States had sought to make “neutrality” and “arbitration” into international law as ways to maintain political non-entanglement, as George Washington had admonished. At the 1907 Hague Peace Conference, the US delegation was the leading proponent of a permanent international court on the model of US Supreme Court. Even in Latin America, the United States attempted to push a legalist empire to their wary neighbors. Backed by Secretary of State Elihu Root, James Brown Scott, cofounder and long-time secretary of ASIL, even managed to found the American Institute of International Law with the cooperation of a Chilean jurist in 1912. Here, while the Latin Americans expected this pan-American legal institution to help preserve their sovereignty, Scott wanted it to help legalize US hegemony in the Western Hemisphere, thus not only affirming the Monroe Doctrine but also providing legal justifica-

tion for military intervention to protect US investors.

In a broad sense, Coates seeks to convey that there is in international law a built-in ambiguity that leaves states torn between state sovereignty and universal principles. Because international law necessarily has a built-in national side, both in its sources and in its interpretations, one should not be surprised that the United States respected international law only to the extent that it was consistent with American values. This is a familiar point. But Coates makes a less familiar point. That is, the United States was still interested in fostering international law to help exercise power legitimately rather than play crude power politics. Coates should be commended for highlighting the power-political side of law that the judicialist legalists have tended to ignore and the legal side of power that the realists have downplayed. Yet one can still ask how much legitimacy such international law had. Focusing mainly on the domestic context, Coates admits that it could not convince everyone, but insists that it could sway enough to support the American empire. This was true. President William McKinley was reelected in 1900 amid anti-imperialist protests. So was President George W. Bush in 2008 despite the widespread opposition to the Iraq War. Even so, one can ask a further question. Did those who championed the American empire do so for legal reasons or for ideological reasons? If it was hard to separate the legal and ideological factors in the West a century ago, this does not seem to be the case in a more diverse yet more inclusive world today.

When World War I broke out in 1914, according to Coates, the United States was a legalist empire in the sense that American legalists moved to defend international law by moving away from the traditional US conception of “neutrality” as avoiding political entanglement and asserting its own rights toward one in favor of engaging the rest of the world and bringing it up to US standard, thus “defending the possibility of a law-governed

world” (p. 143). The United States chose to ally with the Allies to oppose the Germans because the former accepted a law-governed world, but the latter rejected it. As far as the postwar world order was concerned, it is well known that the US Senate rejected the Versailles peace treaty in 1919, and the United States therefore failed to join the League of Nations. In Coates’s view, legalism “played an important role in this outcome” (p. 164). Split among themselves, American legalists had enough power to contribute to the defeat of what Coates views as President Woodrow Wilson’s anti-legalist League of Nations, but were not strong enough to push through an alternative legalist-sanctionist league as represented by the League to Enforce Peace. To Coates, this was a result of competing internationalisms, which “had helped set back internationalism itself” (p. 167), not one of the victory of isolationism over internationalism. Here the usual isolationist Senator William E. Borah came forth as an internationalist who “offered frequent rhetorical support for international law,” although he was “a vehement opponent of the League” (pp. 172-73). Coates thus not only highlights the work of American legalists, but also nicely presents an alternative view of the treaty fight and America’s failure to join the League of Nations. His effort to distinguish between different forms of internationalism, from Scott’s utopian judicialists through the legalist-sanctionist League to Enforce Peace to Wilson’s anti-legalist League of Nations, is innovative and thought-provoking.

Despite his focus on the years from 1898 to 1919, Coates continues to underscore the importance of international law in the interwar period (1919-41), but not so much for its policy impact as for its influence as legal discourse. He notes that World War I discredited the civilizational discourse and thus judicialist legalism, which assumed the progress of civilization. But he insists that American legalists “remained prominent” with their usual faith in “legalism as a project for global order” (p. 170), although they were divided between those liberal internationalists who em-

braced a new communitarian conception of international law and those advocates of American exceptionalism who opposed it. As the latter gained the upper hand, the United States failed to join the Permanent Court of International Justice (PCIJ) founded in 1921. American legalists could only agree to adopt the high-sounding but ineffective Kellogg-Briand Pact in 1928. Coates points out that “many legalists doubted the efficacy of merely declaring war illegal” (p. 173). Then he moves to underscore “an initial plan” behind the pact to create an international court and codify international law. Thus, although there remains the same emphasis in this part of the book on the legalism of the American empire, its substance was apparently getting thinner during the interwar period.

In the concluding chapter, Coates briefly explains why the United States has often shown open contempt for international law since the end of World War II. One major factor was decolonization. The United States had distanced itself from Europe after World War I discredited the shared civilizational discourse. It now moved further away from the world for fear that new independent states might use international institutions to “challenge domestic racial segregation or grant enhanced economic or social rights” (p. 181). Another major factor was that international lawyers lost influence in the foreign policy establishment as “a casualty of the Cold War” (p. 181). Consequently, Coates agrees that the “second half of the twentieth century ... witnessed a disenchantment with international law and an increasing repudiation of it by the United States” (p. 182).

Nonetheless, Coates counters that “international lawyers did not vanish; in fact, they multiplied.” And “international law’s centrality to foreign policy has persisted” (p. 182). Even the second Bush administration “attempted to ground the use of force more firmly in legal interpretation, an approach that his successor, Barack Obama, has followed” (p. 183). Coates explains away rejections of international court jurisdictions against the Unit-

ed States by distinguishing adjudications from law. Here his tendency to place legalism above legitimacy is most striking. In fact, he warns that such legalism “did not always result in ‘legal’ behavior” (p. 13).

Legalist Empire reveals the United States to be a legalist empire in the early twentieth century primarily from the Western perspective. To a greater or lesser degree, its penchant for legalism has since been manifest as well. To the extent that even authoritarian governments today operate under constitutions and tend to justify in legal terms what are repressive policies to the outside world, however, it is obviously not sufficient to prove that the United States has been a legalist country. More important is the issue of legitimacy. Coates does address it, but sees legitimacy more in state actions than in universal principles of justice. In fact, he gives equal attention to both in theory. Ultimately, his tilt toward the state privileges the great powers over the rest of the world and makes the American empire appear more legalist and legitimate than it was. Moreover, he stresses a built-in legitimacy in legal discourse itself as though it were enough to simply invoke legal language, not only from a narrow national but also from a domestic partisan standpoint. In so doing, he risks being an apologist for self-serving legal interpretations in defiance of world opinion, especially when it comes to the contemporary period.

Legalist Empire has added a much-neglected legal dimension to the study of American foreign relations. Coates has thrown enormous light on the role of international lawyers in American foreign policy. His book illuminates not only the ambiguous nature of international law, but also the subtle ways power is exercised. Moreover, it is a wonderful example of cross-fertilization between history of American foreign relations and international law. It is therefore exemplary in its interdisciplinary approach as well. It suggests how one can benefit from an outside perspective by working across disciplines and literatures.

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