



Lauren Benton. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900.* New York and Cambridge: Cambridge University Press, 2002. xiv + 285 pp. \$85.00, cloth, ISBN 978-0-521-80414-1.



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Whigs and Global History

"This book," wrote E. P. Thompson in the preface to *Whigs and Hunters*, "is an experiment in historiography, although not of a kind which is likely to meet with approval." [1] When he wrote this sentence, Thompson was doubtless thinking of the book's sympathetic treatment of poachers and disparagement of magistrates, but it was in the closing pages where his words turned out to be most prescient. After conceding "we might be wise to end here," Thompson suggested that the rule of law in Georgian England was not merely the tool of the landed gentry that his Marxist analysis might lead readers to conclude. Instead, Thompson claimed, England's fabled common law tradition ultimately owed its authority (and effectiveness as an instrument of class rule) to its apparent impartiality and to the ability, even of the "propertyless," to find justice--sometimes--in the king's courts. According to Thompson, "such occasions," while serving "to consolidate power, to enhance its legitimacy, and to inhibit revolutionary movements," simultaneously brought "power ...

within constitutional controls" and were thus "a great deal more than a sham." [2]

Coming from one of the leading partisans of the British Left, these were extraordinary words, which, we can see in retrospect, marked an important watershed in the transition toward the post-Marxist (and, often, neo-Whig) paradigms that are currently ascendant in much of Europe and North America. If historians of the Western metropolises have largely accepted Thompson's insights, however, the same cannot be said of scholarship on the empires that Britain and its rivals established in the extra-European world. Insofar as the law appears in such histories, it is generally "epiphenomenal," a factor of secondary importance to the dynamics of capitalism, geopolitics, and culture. When historians mention the law's role in the European empires, moreover, they tend to treat it as a metropolitan construct imposed unilaterally, not something shaped by subaltern agency.

For all these reasons, Lauren Benton's important new book deserves a careful reading from both legal historians and historians of imperial-

ism. Not only does it suggest that historians need to pay closer attention to the law as a constituent of imperialism (both European and Islamic, modern and early modern, formal and informal), but it makes a strong case for the same dialogic interaction between the legal norms of ruler and ruled in colonial settings that Thompson found in the England of George I. Without arguing that colonial struggles over the rule of law exactly replicated those of Europe's metropolises, Benton, a historian who teaches at the New Jersey Institute of Technology and Rutgers University, maintains that the "global legal regime" that gave definition to imperial projects everywhere between 1400 and 1900 was the product of multiple actors and institutions, and owed its legitimacy, insofar as it can be said to have possessed legitimacy, as much to indigenous agency as to the actions of the main colonizing powers. As Benton writes, "there is no single protagonist of this narrative--and certainly not a Western model of governance or its proponents" (p. 263).

At the heart of this analysis is Benton's contention that empires are by their very nature legally "plural" entities defined by multiple systems of law and complex, frequently ambiguous jurisdictions. This is--or was--as true of the great European empires as of the Moguls and Ottomans, and holds for both the early modern and modern periods. Nonetheless, Benton posits a crucial distinction between the "truly plural" legal regimes of the early modern Iberian and Islamic empires and the "state-dominated" legal regimes that succeeded them in the nineteenth century, with the British Empire being the chief exemplar. In the early modern period, legal regimes were typically multicentric, so that the law of European colonizers was only one of several legal systems available to the subjects of their new empires and was, at times, not even the pre-eminent one. Furthermore, as the simultaneous operation of canon and secular law in the Iberian empires demonstrates, even the colonizers' law was not monolithic but instead afforded both European and

non-European subjects often conflicting jurisdictions within which to bring cases and resolve disputes. By contrast, the state-dominated regimes that took hold in the mid-nineteenth century presupposed the supremacy of European law, which invariably meant an approximation of the law as codified in the metropole. As the history of India suggests, nineteenth-century empires often preserved a degree of pluralism in the law available to certain non-European groups. Where such instances of autonomy had once served to demarcate the limits of European power, however, they increasingly required the sanction of colonial authorities, and as such signified the uniform jurisdiction that the European empires claimed to exercise over all their subjects.

To substantiate the global breadth of her model, Benton draws on examples and case studies throughout the Atlantic, Indian, and Pacific Ocean basins: Spanish New Mexico; Portuguese Goa; Ottoman North Africa; British India; French Senegal; Jamaica, Cape Colony, and New South Wales; and the Oriental Republic of Uruguay. Running through each study is Benton's contention that, because of its legally plural character, colonialism produced legal regimes within which indigenous peoples retained broad cultural agency and over which they therefore exerted considerable control. In the early modern period, the effect was often--as on North Africa's Barbary Coast--to produce a highly ritualized violence, with the absence of universally accepted laws encouraging violence between Christians and Muslims, even as the perpetrators were forced to recognize the limits of their own norms and the need for common codes in matters such as the conversion, ransom, and redemption of captives. Even as colonial states became more powerful and capable of exercising uniform jurisdiction, indigenous groups retained considerable autonomy. As Benton points out, the creation of strong state-dominated legal systems in British India, Cape Colony, and New South Wales was at least partially a response to the willingness of non-Europeans to use

English remedies to gain protection from what they perceived to be weaknesses in their own laws and courts. While not identical to the patrician-plebeian dynamic that Thompson identified in his analysis of the English Black Act, the exchange between colonizers and colonized was sufficiently fluid and mutual to create what Benton calls a "global legal regime" (p. 261) readily intelligible to actors across widely disparate legal systems and cultures.

The great strength of Benton's approach is the way it enables her to transcend the particularities of the multiple national/imperial historiographies that she analyzes, and identify a dynamic common to all. Even more impressively, she does this without discounting the local complexities--cultural as well as interpretative--that characterized the different colonial encounters in her book. Inevitably, because they appear on such a broad canvas, her conclusions raise questions that experts in various fields will want to ponder carefully.

In the case of the British Empire, her trajectory of an imperialism of truly plural legal regimes yielding to one based on state-dominated pluralism rests somewhat uneasily with current interpretations. Although historians of the so-called first empire increasingly acknowledge the existence of "multiple legalities," most still emphasize the Anglicized character of the colonies of settlement that formed its core and depict legal pluralism as a benchmark of the empire that took shape subsequently in India and Africa.[3] If Benton is correct, British and American historians clearly have their work cut out for them in reconciling what J. G. A. Pocock memorably called the English "common-law mind" with the legally plural character of the global regime within which that mind was (and is) situated.[4]

That Benton's book raises such questions only confirms its significance. By extending Thompson's rule of law into the outer world, she challenges the binarism that--despite the felt need to

move beyond binary categories of analysis--all too often characterizes postcolonial studies of Europe's "high imperialism"; likewise, she makes an important contribution to the evolving work on the legally contested character of the world inhabited by the early modern European and Islamic empires. No less important, she reminds her readers that the various legal regimes produced by the interaction between Western and non-European law rarely achieved even the attenuated justice that Thompson was prepared to grant Whig magistrates in England. Among people of different cultures, it would seem, we should not expect the rule of law to operate with the same impartiality and efficiency that allegedly obtains for members of the same nation. Benton is to be congratulated for these insights, and for bringing such far-flung, complex subjects together into a compelling whole. Naturally, in so doing, she reaches conclusions with which not everyone will be comfortable, but that is what good history does.

Notes

[1.] E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon, 1975), 15. The passage quoted actually begins, "There is a sense in which this book is an experiment..."

[2.] *Id.*, 264-265.

[3.] See especially Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, 2001); Jack P. Greene, "Empire and Identity from the Glorious Revolution to the American Revolution," in P. J. Marshall, ed., *The Eighteenth Century* (Oxford: Oxford University Press, 1998) (vol. 2 of *The Oxford History of the British Empire*); and W. J. Mommsen and J. A. De Moor, eds., *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-century Africa and Asia* (Oxford: Oxford University Press, 1992).

[4.] J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957; new edition, 1987).

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