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Book Review



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Abstract

This is a book review of *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* by Benjamin Allen Coates.

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Book Review

***Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century*, by Benjamin Allen Coates¹**

WILLIAM HEISEY²

IT IS 1898. WITH ITS ACQUISITION of the Philippines following its rapid victory in the Spanish-American War and its gaze cast south to the emergent nation states of the crumbling Spanish Empire, America stands at the dawn of its century of worldwide dominance in international affairs. The Secretary of State, Richard Olney, calls on his fellow citizens to “shake off the spell of the Washington legend” and embrace the responsibilities of an interventionist great power.³

This is the time of the Progressive Era—when faith in the progress of ‘civilization’ and scientific advancements both around the world and within America brought optimism to the ruling classes, who sought to implement dramatic social changes whilst firmly maintaining their reins on power.⁴ It is within this dynamic and emergent period in American political history that Benjamin Allen Coates frames his prodigious study of international law and

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1. Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford: Oxford University Press, 2016).
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 3. More specifically, the “spell” was a reference to the established American tradition of non-intervention in European affairs. See Coates, *supra* note 1 at 44.
 4. See William A Link & Susannah J Link, eds, *The Gilded Age and Progressive Era: A Documentary Reader* (Oxford: Wiley-Blackwell, 2012).

the legal profession. Building upon the author's PhD research,⁵ *Legalist Empire* seeks to examine the development of international law in the early twentieth century and reveal how much of its development was linked to the emerging status of America as a Great Power. It is a story of contradictions and of conflict, of politicians and of academics, and of the "great game" played between global empires within which America became increasingly and reluctantly enmeshed. Although many histories of international law envision Woodrow Wilson's plans for the League of Nations as the starting point of America's engagement with international law,⁶ this book pushes the beginning of this engagement back several decades to the end of the nineteenth century, examining the confluence of international legal thinking in the years leading up to World War I.

Legalist Empire also provides a fresh account of the developing profession of international lawyers. It draws upon the correspondence of many influential professionals such as Elihu Root and John Bassett Moore and examines the proceedings of various budding international academic bodies like the American Society of International Law and the *Institut de Droit International*. Coates departs from more traditional accounts by explicitly recognizing that lawyers are "ideological actors as much as technical advisers"⁷ and goes further by examining more particularly how various social and cultural dimensions shaped the development of this emerging legal profession. As Coates acknowledges:

Washington embraces international law when its policymaking elite believes that doing so is consistent with national interests and compatible with national values. Since "interests" and "values" are neither static nor objective, it is vital to understand how social, cultural, and political conditions shape them.⁸

Indeed, it is this flexibility of international law to enforce contemporary political and social objectives that underpins much of Coates' book. It is a tendency seen over the period analyzed in this book: the 1890s through to the aftermath of World War I. It is borne out, for example, in the application of General Orders No. 100: a code first written to guide the behavior of the Union Army during the Civil War, but subsequently adapted by international lawyers to

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5. See Benjamin Allen Coates, *Transatlantic Advocates: American International Law and U.S. Foreign Relations, 1898-1919* (PhD Thesis, Columbia University, 2010) [unpublished].
 6. See e.g. Ruth Henig, *Versailles and After: 1919-1933*, 2d ed. (London: Routledge, 1995) at 9-13; Patricia Clavin, *Securing the World Economy: The Reinvention of the League of Nations 1920-1946* (Oxford: Oxford University Press, 2013) at 2; Margaret MacMillan, *Paris 1919: Six Months that Changed the World* (New York: Random House, 2003).
 7. Coates, *supra* note 1 at 50.
 8. *Ibid* at 180.

authorize the use of punitive reprisals against guerillas contesting the American occupation of the Philippines.⁹ In a very real sense, the instrumentality of international law betrayed its idealistic origins. As Coates observes, international lawyers “embodied an optimistic reformist sensibility that promoted national and class interests in the guise of universal values.”¹⁰

An additional heuristic element looms large in Coates’ analysis—the tendency of many policymaking elites of the Progressive Era to adopt the Kiplingian drive to assume the ‘burden’ of civilizing backward nation states and to employ it as a justificatory device behind the introduction of many substantial political interventions and legal developments. The profound integration of this concept in pre-Great War thought should not be underestimated. As Coates argues, “the internalizing of the concept of ‘civilization’, the way that legalists instinctively felt its truth, the way it appeared as inevitable as it was desirable: these were essential to the legalist mindset.”¹¹

For example, in the public fallout from American maneuvering behind the secession of an independent state of Panama (which subsequently agreed to the construction of the Panama Canal on more unfavorable terms than offered before secession), it became vital that what had been done “be defended on definite legal ground.”¹² Several reasons were promulgated upon this ground, including most notably that U.S. intervention was justified on the basis it had received “a mandate from civilization...in the interest of mankind.”¹³ Interestingly, while the more tortured traditional treaty interpretations were criticized, the populist appeals to a mandate for civilization proved highly persuasive.¹⁴

The power of ‘civilization’ to underpin and shore up otherwise dubious legal arguments was witnessed yet again in the case of the Philippines. As the applicability of General Orders No. 100 to the context of a colonial rebellion became increasingly questioned, the U.S. defense became that as ‘savages’ the Filipinos did not deserve the civilized treatment otherwise afforded to them under international legal norms.¹⁵ Even more intriguingly, Coates begins to explore (but does not expound further upon) the ‘imposition’ (or rather reception) of legalism in “dependent countries” in South America, arguing that in fact many elites of

9. *Ibid* at 50.

10. *Ibid* at 61.

11. *Ibid* at 178-79. In this book review, “legalists” refers to the cadre of contemporary international lawyers that straddled both the professional and policy-making worlds.

12. *Ibid* at 56.

13. *Ibid*.

14. *Ibid* at 57.

15. *Ibid* at 52.

these countries openly embraced international law to prove their ‘civilized’ status in the eyes of the world in a sort of expression of cultural insecurity.¹⁶ This astute observation could have borne further investigation as it provides an interesting complement to the driving forces of civilizing ideology behind American interventions in the early twentieth century.¹⁷

These major themes are further illustrated by an examination of how the book and its various arguments unfold. In summary, at the beginning of the twentieth century American foreign policy was by tradition based upon three often contradictory values: isolation from European affairs, the Monroe Doctrine, and Manifest Destiny.¹⁸ It became increasingly difficult for America, given its rapid economic growth and increasing political clout, to reconcile these competing aims successfully. In response, Coates argues, international law arose as a tool to help with this reconciliation. A global legal infrastructure on American terms (namely, through the introduction of arbitration and a global court) could preserve non-entanglement yet allow for an “imperial international law” to satisfy the emerging needs of a new world power.¹⁹ Indeed, as one contemporary international law journal framed it, “[one] might almost say” that America is a “violent partisan...of international arbitration.”²⁰

Legalism, Coates concludes, offered the solution. It provided the language and concepts that helped the United States to resolve a tricky ideological problem it faced in the early 1900s: How can a nominally and vocally anti-imperial republic become an empire at the same time?²¹ The role of the developing body of international lawyers and policymakers was central to this emergence of legalism underpinning American imperial ventures, as “to understand the working of international law it is necessary to understand the mental worlds and professional networks of the foreign policy establishment.”²²

Coates begins *Legalist Empire* by surveying developments in international law in the United States at the end of the nineteenth century. He concludes that

16. *Ibid* at 119-20.

17. There are interesting parallels to this receptive process in Romanization theory, which envisions a “creolized” negotiated identity whereby local elites willfully assumed dominant cultures to serve their own ends. See Jane Webster, “Creolizing the Roman Provinces” (2001) 105:2 *American Journal of Archaeology* 209; David Mattingly, “Being Roman: Expressing Identity in a Provincial Setting” (2004) 17:1 *Journal of Roman Archaeology* 5.

18. *Ibid* at 25-26.

19. *Ibid* at 26, 38.

20. *Ibid* at 30.

21. *Ibid* at 83.

22. *Ibid* at 179.

by 1898, the U.S. “had developed a tradition of promoting international law in order to maintain political non-entanglement” albeit without the European tendency to promote “overseas empire.”²³ After 1898, however, constitutional and international law were seen as playing “important roles in making American empire possible,” enabling lawyers to connect “imperial actions to broader ideological claims grounded in discourses of civilization.”²⁴ When confronted with public unease about overt American colonial ambitions, international lawyers presided over the “domestication” of international law in America, recasting the “civilizing mission” as America’s leadership of a global movement of justice and peace in the years leading up to 1914.²⁵

This ideal manifested itself more concretely in America’s rise to become a leading proponent of the creation of a permanent international court—an ideal that came under attack during episodes of American intervention, such as in Panama.²⁶ The arrival of Woodrow Wilson presented *prima facie* a “fundamental challenge” to legalism; however, as Coates demonstrates, Wilson’s pre-war term actually became more interventionist than its predecessors.²⁷ The outbreak of the Great War proved a transformative moment in the development of the ideology of international law. Framing World War I as a “war for law,” international lawyers mobilized to turn public opinion against Germany, justifying ‘neutral’ America’s entry in 1917 as combatting the rise of illiberal and illegal “Prussianism.”²⁸

Following the Great War, the powerful image of law’s role in the steady advance of ‘civilization’ had been irreparably shattered and a revival of the prewar legalist project had become impossible. Advancing international law would instead require commitment to supra-sovereign institutions—culminating in America’s advocacy of the embryonic League of Nations.²⁹ This extensive history reveals most notably that the first decades of the twentieth century represented both a legalist age and an imperial one—law made empire possible and when the allure of empire waned the spread of international legal institutions stepped in to protect American overseas capital.³⁰

The predominant tendencies of this book parallel those of Martti Koskenniemi, who similarly applies a contextual analysis to the development

23. *Ibid* at 38.

24. *Ibid* at 58.

25. *Ibid* at 85.

26. *Ibid* at 106.

27. *Ibid* at 134-35.

28. *Ibid* at 150-51.

29. *Ibid* at 175-76.

30. *Ibid* at 178.

of international law in the late nineteenth century.³¹ Central to Koskenniemi's work is the notion of "sensibility," which encompasses a set of attitudes and preconditions about international affairs related to the notion of "culture" and which structured the ways international lawyers thought and worked.³² This notion of "sensibility" is not dissimilar to Coates' emphasis upon the notion of "civilization" as underpinning much of the early development of international law in America.³³ Given that much of Koskenniemi's focus is concerned with the Scramble for Africa and other European interventions (coupled with the legalistic justifications of European lawyers), Coates' account helps to fill in gaps in the literature by applying a similarly contextual analysis of the legal reasoning behind American interventions in South America.³⁴ It succeeds by complicating the development of international law over the late nineteenth century into the twentieth century so that it can no longer be envisioned as "classical" or "traditional" in the nineteenth compared with its "modernization" in the twentieth century.³⁵ Indeed, as Coates concludes, the conventional binary interpretation of international law as requiring less empire and exceptionalism as requiring less international law is not borne out in his historical study.³⁶

While *Legalist Empire* succeeds in complicating, its tone at times can also become laconic. Coates argues at one point that Theodore Roosevelt had decided that a combination of "government oversight, big capital, and East Coast professionalism represented the best way to maintain US hegemony," but then eschews the challenge of elaborating upon these points in more detail.³⁷ Similarly, while the Great War is framed as a pivotal moment in the development of conceptualizations of international law (for example, by destroying the ideal

31. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2001). See also Rein Müllerson, Book Review of *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* by Martti Koskenniemi, (2002) 13:3 Eur J Intl L 727.

32. Koskenniemi, *supra* note 29 at 727.

33. Antony Anghie has remarked upon the importance of the "civilizing mission" to the development of international law in great detail. See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

34. Coates notes that there are two "brief studies" of US international lawyers. See Carl Landauer, "The Ambivalences of Power: Launching the *American Journal of International Law* in an Era of Empire and Globalization" (2007) 20:2 Leiden J Intl L 325; Martti Koskenniemi, "The Ideology of International Adjudication" (Paper delivered at The Hague, 7 September 2007) [unpublished].

35. David Kennedy, "International Law and the Nineteenth Century: History of an Illusion" (1997) 17:1 Quinipiac L Rev 99 at 108.

36. Coates, *supra* note 1 at 178.

37. *Ibid* at 114.

of “civility” for enforcing international legal judgments between countries), discussion of this conflict and America’s entry is confined to a relatively cursory sixteen pages.³⁸ At times the discussion may have benefitted further from drawing deeper comparisons to contemporary legal developments in Britain—the 19th century was, after all, “Britain’s Century”³⁹—and contrasts to British legal justifications of Empire might have provided additional insights into the legal reasoning underpinning American foreign policy decisions.

On the whole, *Legalist Empire* represents a striking and eminently well-researched account of the development of international law and international lawyers in America over the Progressive Era and beyond. It successfully problematizes the role of international law and legalist thinking in Empire—“for international law has long cast an imperial shadow, and even as Americans sought ways to avoid the chill, they imagined extending it to others.”⁴⁰ It is satisfying that in conclusion the author begins to frame these implications within contemporary American interventions like the Iraq War. The legacy of Richard Olney exhorting fellow Americans to “shake off the spell of the Washington legend” is found alive and well today in George Bush’s response to Donald Rumsfeld’s suggestion that his Iraq adventure may not be in keeping with international law: “I don’t care what international lawyers say, we are going to kick some ass.”⁴¹ It is in this overt recognition of the instrumentality of international law and its grounding in the ideological motivations of its practitioners that *Legalist Empire* provides the reader with important lessons about how (and why) international law might be practiced today and into the future.

38. *Ibid* at 136-51.

39. WD Rubinstein, *Britain’s Century: A Political and Social History, 1815-1905* (London: Bloomsbury Academic, 1998). Note however criticisms in Christopher Kent, Book Review of *Britain’s Century: A Political and Social History 1815-1905* by WD Rubinstein, (2001) 43:2 *Victorian Studies* 338. See also Susie L Steinbach, *Understanding the Victorians: Politics, Culture and Society in Nineteenth-Century Britain* (London: Routledge, 2012).

40. Coates, *supra* note 1 at 14.

41. *Ibid* at 177.

