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Abstract

Fittingly, Rage For Order by Lauren Benton, Professor of Law and History at Vanderbilt University, and Lisa Ford, Associate Professor of History at the University of New South Wales, takes both its title and its epigraph from the last stanza of Wallace Stevens' "The Idea of Order at Key West." Originally written on the then-sparsely inhabited island of Key West in Florida, the poem blends the sound of a woman singing with the ocean and uses that voice to delineate the various boundaries between wave, sky, and horizon line. Beginning with the stanza quoted above, Stevens ends up identifying the ocean with that voice, and describes the singer as the one who creates that ocean with her singing, before he then describes our "rage" for order. Put another way, Stevens writes a poem about how man—or woman!—is the one who orders the natural world, delineating with light and sound the various zones and poles of the ocean. It is a fitting epigraph precisely because the project of empire and international law both are similar attempts by humankind to order the world. For this book, however, the key word in the poem is, of course, rage: rage as a thoughtless, uncontrolled passion; rage as a deeply damaging action; rage as a fashionable craze. All three understandings of rage have their place in the narrative of empire spun by Benton and Ford.

Book Review

Rage for Order: The British Empire and the Origins of International Law 1800–1850 by Lauren Benton & Lisa Ford[1]

SAM ZUCCHI[2]

> …Then we,
>
> As we beheld her striding there alone,
>
> Knew that there never was a world for her
>
> Except the one she sang and, singing, made.
>
> —Wallace Stevens, "The Idea of Order at Key West"

FITTINGLY, *RAGE FOR ORDER* by Lauren Benton, Professor of Law and History at Vanderbilt University, and Lisa Ford, Associate Professor of History at the University of New South Wales, takes both its title and its epigraph from the last stanza of Wallace Stevens' "The Idea of Order at Key West." Originally written on the then-sparsely inhabited island of Key West in Florida, the poem blends the sound of a woman singing with the ocean and uses that voice to delineate the various boundaries between wave, sky, and horizon line. Beginning with the stanza quoted above, Stevens ends up identifying the ocean with that voice, and describes the singer as the one who creates that ocean with her singing, before he then describes our "rage" for order. Put another way, Stevens writes a poem about

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1. Lauren Benton & Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law 1800-1850* (Cambridge, Harvard University Press, 2016).
2. JD Candidate 2018, Osgoode Hall Law School.

how man—or woman!—is the one who orders the natural world, delineating with light and sound the various zones and poles of the ocean. It is a fitting epigraph precisely because the project of empire and international law both are similar attempts by humankind to *order* the world. For this book, however, the key word in the poem is, of course, *rage*: rage as a thoughtless, uncontrolled passion; rage as a deeply damaging action; rage as a fashionable craze. All three understandings of rage have their place in the narrative of empire spun by Benton and Ford.

Rage for Order takes for its subject matter the British Empire in the first half of the nineteenth century, and argues that the various expansionist projects it undertook laid the groundwork for what would, eventually, become international law. Broadly speaking, Benton and Ford argue this expansionist project, while often haphazard, inconsistent, and more often than not merely driven by opportunistic or enterprising individuals in widely different colonial regions, nevertheless served to extend the power of the centre over various peripheral regions. In making this argument, the various chapters take after their subject empire and span the globe: thirty pages may cover investigative commissions in Australia[3] before switching focus to a similar commission in the Caribbean; state ordering in Polynesia is presented in parallel with British interference with the Rio de la Plata. Yet what saves this argument from becoming a rote series of anecdotes—"How are commissions in *x* and *y* the same? Well…"—is the recurrence of two themes.

The first is the notion of 'middle power'—the idea that various agents of the Crown could effectively wield executive authority to temper tyranny that might "creep from the peripheries to the center."[4] The authors borrow this term from one of their subjects, Thomas Maitland—more on him later—to describe the specific nature of the authority held by governors and other representatives of the authority of London. Faith in the notion of middle power was held not only by those who wielded it: given that slavery was viewed as the most iconic form of despotism, abolitionists embraced the use of middle power as a way of limiting the cruelty of local masters and, eventually, outlawing the institution entirely. These goals dovetailed with those of colonial governors, who viewed the imposition of a uniform and imperial standard as a way of bringing local autonomy—often, again, represented in the form of the despotic slaveholder—to heel.

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3. Indeed, in a reflection of what may simply be a familiarity with local history on the part of one author—Australia and New South Wales specifically—is given more attention than any other part of the world.
4. Benton & Ford, *supra* note 1 at 7. The term is the label given to states that, despite not being superpowers, nevertheless have enough power to have some impact on world affairs.

The second theme is the vernacular constitution. Here, *Rage for Order* engages more with the secondary literature surrounding constitution building in the early nineteenth century: the issue of constitutionalism in the early nineteenth century has seen a great deal of critical attention, though usually with regards to that of the then-nascent United States of America, or the various constitutions that sprouted in the wake of the South American wars of independence. Benton and Ford both note that the British constitution in the early nineteenth century has not received the same degree of attention, even as discussions primarily focused on American constitutionalism often invoke comparisons to British efforts in the same period.[5] Colonial efforts at articulating this constitution—and the rights of British subjects—were tied to the same concerns with despotism that middle power sought to address. Hence the project of creating a legal code that would be simultaneously flexible, yet familiar enough, to create order throughout the British Empire. Various commissions and bodies of review—which all had "strategic deference to the principle that colonies should not adopt laws repugnant to the laws of England"[6]—sought to simultaneously harmonize the various cultural and inherited legal codes of different colonies with an unwritten constitution. The result was an often-conflicting hodgepodge that simultaneously reflected the empire as a whole and the particulars of each individual colony with their place in the empire:

> Canada, New South Wales, and the Cape shared constitutional space with India, Ceylon, and Sierra Leone, not because race did not matter or because the colonies were deemed equivalent, but because imperial law talk was flexible enough to be inclusive without aspiring to universalism.[7]

Much of the narrative of these constitutional explorations is concerned with detailed specifics, for example, the formulation of legal codes in modern-day Sri Lanka, with treaties between the empire and various Indonesian sovereigns, or the reports of various commissioners across the Empire. The articulations of these legal instruments, despite their diversity, were representative of the informal and confused way in which the empire established a legal order across the globe.

Rage for Order then positions itself as outlining the middle ground between the revolutions of the late eighteenth-century and the international order that emerged a century later. Equal parts revisionist history and ground-breaking research, the book's diversity of subject matter and locations serves as a good response to what

5. See *e.g.* Lauren Benton, "Constitutions and Empires" (2006) 31:1 Law & Soc Inquiry 177 at 194.
6. Benton & Ford, *supra* note 1 at 13
7. *Ibid* at 17.

Benton has elsewhere described as a critique of imperial historiography in this period: "imperial legal culture … has been pursued unevenly, often limited by attention to one locale or by a privileging of elite pronouncements over a broader and more diffuse arena of political discourse."[8] Or, as Benton and Ford put it in this book, "[i]t is perhaps deeply unfashionable to seek to recover the juridical thought of low- and mid-level bureaucrats and their antagonists and allies in the colonies,"[9] but it is the juridical thought embedded in nitty-gritty details of law commission reports, letters, and pamphlets that percolated into justifications for colonial intervention and legal reform. In delving into dry commission reports and salacious correspondence from far-flung corners of the globe, Benton and Ford attempt to fill in the gaps piecemeal, as with a mosaic: John Canning's search for sovereigns in modern-day Indonesia, for example, or the conflict with the Kingdom of Tahiti over the killing of a few sailors are, individually, minor events in this period, yet Benton and Ford convincingly argue that they represent important moments in the extension of British power. The picture these kinds of arguments ultimately paint is a messy one not merely in terms of geography, but in terms of source material—for every dry commission report, there is a salacious correspondence; for every familiar report of colonial conquest, there are bizarre stories like that of James Brooke, who kept deceiving his way up the chain of command in Southeast Asia. Indeed, at times the combinations can sound like comical trivia questions—"What does the Kingdom of Kandy have to do with the Ionian Islands? Keep reading to find out!"—yet these diffuse areas of discourse serve to strengthen the book's argument regarding the hub's ultimate extension of power over the periphery. Beyond that point, the variety of narratives make for an entertaining read.

Yet even as Benton and Ford explore new avenues of research, they also seek to upend conventional wisdom regarding the origins of international law. For example, the authors engage with the argument that "British efforts to enforce global prohibitions—in particular, a ban on piracy and the slave trade—[served as] the origins of powerful international norms, including the seeds of human rights law."[10] But instead of accepting that the roots of these prohibitions lay in nascent understandings of crimes against humanity or an international policing

8. Benton, *supra* note 5 at 180. Put another way, the sources relied on in *Rage for Order* serve as a presumptive affirmative answer to the question posed in the title of an essay by Hazel Fox. See Hazel Fox, "Peremptory Norms: Is There a Need for New Sources of International Law?" cited in Matthew Craven, Malgosia Fitzmaurice & Maria Vogiatzi, eds, *Time, History and International Law* (Leiden, Netherlands: Martinus Nijhoff, 2007) at 119.
9. Benton & Ford, *supra* note 1 at 10.
10. *Ibid* at 20.

regime, Benton and Ford argue that "bilateral treaties created a series of permissive spaces for imperial enforcement that relied on British municipal law and modified prize law, and produced a patchy regulatory regime."[11] This reimagining of the roots of international human rights law fits neatly with the jumbled-up quality of the various legal developments described in the book: abolitionists like James Stephen relied upon the codification of legal systems in various slave colonies as a way of protecting slaves because it was the most expedient way to limit the petty despotism of their masters; or the regulation of piracy in Indonesia took the form of a uniform ordering of different kinds of power and statehood unfamiliar to European eyes. In a word, the foundation of international law was often thoughtlessly slapdash, rendered into a legal form—more often than not by non-lawyers—to meet the needs of the moment and later passing into precedent. Yet, looking backwards, a pattern does emerge in the themes of constitutionalism and middle power.

Chapter Four—"The Promise of Protection"—is particularly illustrative of the way Benton and Ford's argument operates. First, the term "protection" is introduced as a term that encapsulated shifting ideas of Crown authority and individual autonomy, depending on either definition's expediency:

> 'Protection' came to mean both the protection *of* the Crown, as extended to especially vulnerable groups of subjects or to all subjects, and protection *from* the exercise of arbitrary power—even by those authorized to act for the Crown.[12]

These contradictory definitions are then introduced in two very different instances: the former served as the legal justification for the annexation of the Kingdom of Kandy (modern day Sri Lanka); the latter circumscribed British control of the Ionian Islands and its inhabitants.

In Kandy, the language of protection—first, protection of the Kandyan King's person, and then of the common people—was used by the first British governor to justify the attempted imposition of a British garrison on the interior of the island. In slight contrast, Thomas Maitland, the second governor, sought to emphasize a more legalistic formulation of protection that relied on an extension of executive power. This would be accomplished in two ways: first, through "a suite of measures to strengthen the authority of midlevel judges and to extend the reach of executive authority to the local level";[13] second, through "a strong

11. *Ibid*. For the authors' discussion of the specifics of anti-piracy and anti-slave trade measures during this period, see *Ibid*, ch 5.
12. *Ibid* at 87.
13. *Ibid* at 94.

hand for the governor,"[14] that could, if necessary, overrule the chief justice of the local judiciary. The first avenue represents the theme of middle power that runs through *Rage for Order*; the latter was crushed by London, with supervisory powers over the courts being given to the chief justice of the colony. Nevertheless,

> Maitland argued that the situation with Kandy called for a combination of legal strategies, dependent on the actions of a strong governor. He begged for power to respond to Kandyan provocations unfettered by "fixed and invariable rules" and advocated a project of legal ethnography in coastal territories and in Kandy—gathering information that might lead to a "code of customary laws" that would underpin the extension of British authority throughout the island.[15]

Maitland's successor, Robert Brownrigg, would oversee such an extension of British authority by merging these two themes—the impression of an impartial system of justice and the rhetoric of protection—by manufacturing a *casus belli* against the King in the name of the oppressed Kandyan subjects. At the outset of hostilities, Brownrigg promised to "retain the 'ranks and dignities' of the chiefs, not to attack the people's religion, and to preserve 'their ancient laws and institutions.'"[16] Helpfully, Maitland had begun the project of codifying these laws. Once the interior of the Kingdom was conquered, control was maintained by refashioning "protection … as a condition of their submission to British troops and not just against the tyrannous king but also 'against all Foreign and Domestic Enemies.'"[17]

In contrast to its expansive definition on the island of Ceylon, the seven Ionian Islands witnessed British attempts to reign in the language of protection in order to maximize control while limiting their obligations. These islands were awarded to Britain in the 1815 Treaty of Paris not as sovereign possessions (as with Malta, or Corfu) but as protectorates, with Britain playing the role of "protecting sovereign"[18] which led to tension both within the Islands and without: Internally, British attempts to extend control led to friction with Greek Nationalists; externally, the legal status of alleged Ionian pirates captured by the Ottoman Empire led to questions about what kind of protection the British Crown owed the Ionian people. Into this simmering conflict enters the very same Thomas Maitland, originally as the first governor of Malta after his stint in Ceylon ended in 1811. Maitland was posted to the Ionian island with one

14. *Ibid* at 95.
15. *Ibid* at 97.
16. *Ibid* at 98.
17. *Ibid* at 99.
18. *Ibid* at 103.

mission: "to create an assembly that would in turn design a new constitutional charter for ratification."[19] Maitland's attempt at reformulating the legal system of yet another island was, by this point, familiar: it called for a strong executive power invested in the High Commissioner who could, if necessary, dictate terms to the Islands' legislative body. This charter was not free from criticism: "Maitland had misconstrued protection, according to his critics; he used it as constitutional cover for the concentration of power in the executive."[20] Yet this extension of British power under the legal codification of protection was hardly unpopular: "As in Ceylon, Maitland's opponents did not get very far; he had the full support of the Secretary of State for War and the Colonies."[21]

At once, Maitland oversaw the extension of the constitutionalist project across the globe, while expanding his conception of middle power. Further—and this is where the authors' thesis connects with the established body of scholarship—it laid the groundwork for the more infamous developments in the second half of the nineteenth century. Though the "1850 Don Pacifico affair features as a key moment when the British government articulated an expansive right to *protect* its subjects anywhere in the world,"[22] this affair was the culmination, according to Benton and Ford, of the development of the legal notion of protection. Despite the disparate forms this development took—protection *of* the populace as justification for invasion and occupation in Ceylon; the internationally agreed upon mandate of protection as justification for the imposition of control in the Ionian Islands—it represented a flexible imposition of uniformity, of *order*, across the British empire.

But even as the variety of the book's evidence supports its innovative and revisionist argument, it also represents the book's greatest weakness. *Rage for Order* bases its argument, in part, on illustrative anecdotes which, when taken together, attempt to illustrate a general trend. Yet, to borrow an expression from the sciences, the plural of anecdote is not data, and the arguments made in *Rage for Order* bear the risk of seeming parochial instead of cohesive. In that vein, the book focuses on a relatively limited geographical area: Australia, The Caribbean, and the Pacific Ocean are recurrent areas of interest while other areas of the world—like Persia or Canada—are mentioned only in passing. India receives little attention, despite its importance in the British Empire and the way in

19. *Ibid* at 105.
20. *Ibid* at 109.
21. *Ibid.*
22. *Ibid* at 112.

which it functioned as an "empire by treaty,"[23] blending international diplomacy and imperial expansion. Indeed, the Indian model might have fit perfectly into Benton and Ford's discussion of state-building—or, to use their terms, "incubating states"[24]—in Chapter Six. Furthermore, the book's argument from the margins of history appears susceptible to arguments from exception: though *Rage for Order* is not meant to be comprehensive in its focus, the potential of the margin lies in its novelty, and not in its ability to necessarily overturn all established thought—especially not when so much of the globe is left unexplored.

Similarly, and as a corollary of its focus on the British Empire, *Rage for Order* ignores both the developments of other empires and the British Empire's interaction with those powers. The Monroe Doctrine, for example, is never touched upon, despite the lengthy discussion given to European involvement in the Rio de la Plata in Chapter Six. There, Benton and Ford note the ways in which Empire was construed as a collection of states both outside and under a unifying political umbrella, which helped to set the stage for future inter-state legal relationships—but what of the agreements between contemporary empires? In part, this limitation reflects the *dramatis personae*: few of the book's subjects were actual lawyers, and so any discussion of formal legal attitudes or philosophies would have, at best, gone over the heads of most characters or, at worst, been ignored in favour of expediency.[25] Where more legal minds enter the narrative, their concerns are focused on the inner workings of the British Empire. European involvement in South America is described with little reference to the interplay between nations and states, but rather with reference to the British ordering of those states:

> Polities advanced their interests by proposing that an array of states act together as the guardians of commerce. Regional elites, as much as British agents, saw advantage in disorganized systems of fractured sovereignty that were loosely joined by the recognition of British (and European) power.[26]

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23. See Robert Travers, "A British Empire by Treaty in Eighteenth-Century India" in Saliha Belmessous, ed, *Empire by Treaty: Negotiating European Expansion, 1600-1900* (Oxford: Oxford University Press, 2015) 132at 132.
24. Benton & Ford, *supra* note 1 at 175.
25. This unprofessionalism renders inappropriate discussions of legal positivism in some of the literature on the origins of international law in the colonies. See *e.g.* Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2005) at 41-65.
26. Benton & Ford, *supra* note 1 at 178.

The implication that this arrangement served as a rough progenitor to future international legal models is clear, but the emphasis is on the British narrative over the European project.

These critiques and caveats are not meant harshly, but rather as an outline of the book's limitations. Nor are they to argue that *Rage for Order* is simultaneously under- and over-inclusive—that it draws too broad a stage while simultaneously failing to take into account the bigger picture. It succeeds as a revisionist project that tries to use the history of middlemen and margins in order to describe an area that has received little attention and to reconsider the received conclusions. It further serves as an example of the new directions that academics can explore thanks to the increasing digitization of disparate archives of primary sources. In its lack of comprehensiveness, *Rage for Order* serves more as a useful pairing with other lines of critical analysis, such as the way in which systems of international law replicate the values of the colonizer on the colonized.[27] Indeed, to draw one last parallel between *Rage for Order* and its subjects, the book might function best as a parallel to Maitland: an influential single example, working in accidental and unintentional concert with other small, revisionist works to redefine our understanding of the origins of international law and the British Empire.

27. See *e.g.* Brett Bowden, "The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization" 7:1 (2005) J Hist Int'l L 1; Anghie, *supra* note 25.