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## International Status in the Shadow of Empire: Nauru and the Histories of International Law by Cait Storr

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Book Review



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### Abstract

IN 2007, THE PARLIAMENT OF NAURU, a (formerly) phosphorus-rich island nation located in the southwest of the Pacific Ocean, was presented with a report completed by its appointed Constitutional Review Commission that sought to explain, in short, “[w]hat’...had gone ‘wrong’ with the Republic of Nauru.” The Commission, funded by the United Nations Development Programme, produced a scathing report, which concluded that Nauru was in dire need of constitutional reform and that the nation needed to better its institutions, laws, and training of leaders in the business of governance in order to address the failures of the state. The government initiated a referendum vote to address the gaps identified in the 2007 report. In 2010, that vote was held: The referendum campaign failed, with 67 per cent of the population of Nauru voting no and 33 per cent voting yes.

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## Book Review

## *International Status in the Shadow of Empire: Nauru and the Histories of International Law* by Cait Storr<sup>1</sup>

JORDAN CROCKER<sup>2</sup>

*The story of tiny Nauru, once one of the wealthiest states per capita in the world, is a tale of rapacious colonialism, epic mismanagement, and avarice.... A series of corrupt and incompetent governments found extravagant and spectacular ways to lose the country's wealth.*<sup>3</sup>

IN 2007, THE PARLIAMENT OF NAURU, a (formerly) phosphorus-rich island nation located in the southwest of the Pacific Ocean, was presented with a report completed by its appointed Constitutional Review Commission that sought to explain, in short, “[w]hat’...had gone ‘wrong’ with the Republic of Nauru.”<sup>4</sup> The Commission, funded by the United Nations Development Programme, produced a scathing report, which concluded that Nauru was in dire need of constitutional reform and that the nation needed to better its institutions, laws, and training of leaders in the business of governance in order to address the

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1. Cambridge Studies in International and Comparative Law, vol 150 (Cambridge University Press, 2020).
  2. JD/MBA (2022), Osgoode Hall Law School and Schulich School of Business.
  3. Anne Davies & Ben Doherty, “Corruption, incompetence and a musical: Nauru’s cursed history,” *The Guardian* (3 September 2018), online: <[www.theguardian.com/world/2018/sep/04/corruption-incompetence-and-a-musical-naurus-riches-to-rags-tale](http://www.theguardian.com/world/2018/sep/04/corruption-incompetence-and-a-musical-naurus-riches-to-rags-tale)> [perma.cc/T4DR-3SU5].
  4. Storr, *supra* note 1 at 1.

failures of the state.<sup>5</sup> The government initiated a referendum vote to address the gaps identified in the 2007 report.<sup>6</sup> In 2010, that vote was held: The referendum campaign failed, with 67 per cent of the population of Nauru voting no and 33 per cent voting yes.<sup>7</sup>

In *International Status in the Shadow of Empire: Nauru and the Histories of International Law*, Cait Storr, a Chancellor's Postdoctoral Research Fellow (as she then was) in the Faculty of Law at the University of Technology Sydney, tells a story of an island nation that has been decimated by colonial greed. However, to place "decimated" in its past tense would be a mistake per Storr's analysis because, as she convincingly argues, the process of decolonization does not suddenly end upon independence. Indeed, it continues in the present day through administrative structures, which certainly is an argument that questions the notion of "neo-colonialism." At the same time, framing Storr's intervention in this way makes it appear as if her monograph is not necessarily a novel one—one could argue that the idea of colonialism ending at independence has fallen out of fashion in historical thought, especially after Edward Said's seminal work, *Orientalism*, in 1978.<sup>8</sup> To her credit, Storr recognizes the work of other historical scholars and notes, "This book joins the chorus of voices that have, since the 1950s, challenged the presumption that sovereign territorial statehood is the natural or final vehicle for decolonisation."<sup>9</sup> Rather than simply reiterating the work of these scholars, Storr sees her unique intervention as supplementing the chorus of scholarly voices with "analytical tools for diagnosing the continuities between imperial exploitation and the contemporary international order" so that they are better equipped for "disrupting and dismantling those continuities, and working to support a more expansive concept of decolonisation than that institutionalised in the international legal order of the twentieth century."<sup>10</sup> Put another way, Storr provides analytical tools that might better enable scholars to recognize and dismantle systems of colonialism.

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5. *Ibid* at 2. See Government of the Republic of Nauru & United Nations Development Programme, "Nauru Constitutional Reform Project" (2008), online (pdf): *United Nations Development Programme* <[info.undp.org/docs/pdc/Documents/FJI/00058097\\_Nauru%20CRC\\_Prodoc.pdf](http://info.undp.org/docs/pdc/Documents/FJI/00058097_Nauru%20CRC_Prodoc.pdf)> [perma.cc/G6V6-VKSJ].
  6. Storr, *supra* note 1 at 1.
  7. Government of the Republic of Nauru, "Constitutional Review Project," online: <[web.archive.org/web/20210814183654/http://naurugov.nr/parliament-of-nauru/projects/constitutional-review-project.aspx](http://web.archive.org/web/20210814183654/http://naurugov.nr/parliament-of-nauru/projects/constitutional-review-project.aspx)> [perma.cc/L56A-QYK5].
  8. (Vintage Books, 1979).
  9. Storr, *supra* note 1 at 10.
  10. *Ibid*.

Given Storr's focus on providing new analytical tools, her intervention necessitates overturning what might have been the normally analyzed sources in an international legal monograph: treaties, customs, principles, judicial decisions, and juridical writings.<sup>11</sup> Storr does not privilege these sources; instead, she chooses to broadly use official instruments that "effected changes in the international status and administrative form of Nauru" as well as contemporaneous sources that explain how these instruments came to be, which opens her analysis to the use of a diverse range of sources.<sup>12</sup> Her focus on these instruments is explained by Storr's attention to two theoretical traditions: jurisdiction and bureaucracy.<sup>13</sup> In the former, Storr is more concerned with "locating the instantiation of an administrative form of rule in the late nineteenth century in a particular imperial location, and following its development through into the period of sovereign statehood."<sup>14</sup> In the latter, Storr adopts a modern take on the Weberian theory of bureaucracy, replacing the use of "bureaucracy" with "administration" to better reflect Max Weber's reference to public and private authority, and relying on Weber's insistence that "bureaucratic [*i.e.*, administrative] forms of relation, once instantiated, permit only further bureaucratisation."<sup>15</sup> In essence, Storr is proving the axiom that bureaucracy creates more bureaucracy—or, rather, that once it is created, the colonial bureaucratic machine is simply too much to overcome.

Each chapter of Storr's analysis re-describes a shift in Nauru's international status as well as the administrative changes that occurred with each shift.<sup>16</sup> In chapter two, Storr begins her analysis with Nauru's place as a protectorate of the German Empire. She then moves with ease and readability through a brief history of the Hansa, the development of the German Pacific trading network, and the regime of imperial protectorates that Germany established.<sup>17</sup> Of particular note in this chapter is Storr's focus on the ad hoc executive decisions that the German Reich made in relation to the Marshall Islands Protectorate (with Nauru as one of the islands) and how the Reich's agreements with the Jaluit Gesellschaft, the company created to take on the administration of the protectorate, "laid the structural foundations on which the imperial and then

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11. *Ibid* at 23.

12. *Ibid* at 23-24.

13. *Ibid* at 15.

14. *Ibid* at 17.

15. *Ibid* at 23.

16. *Ibid* at 39.

17. *Ibid*.

international administration of Nauru was to develop over the twentieth century,” especially regarding the mineral rights on Nauru.<sup>18</sup>

In chapter three, Storr describes the process by which the island shifted from a German protectorate to a German colony, and then to a British mandate after the conclusion of the First World War.<sup>19</sup> These three shifts within this period also exemplify and highlight the changing international legal relationship that Nauru had with its phosphorus-hungry overlords. As Storr notes, “Whereas at the commencement of the protectorate era, German concern with Nauru was entirely commercial, between 1888 and 1920 a legal framework for the administration of Nauru gradually sedimented into place, ordinance by ordinance.”<sup>20</sup> The slow bureaucratization of the legal relationship was particularly present in the mining operations on the island, as the Gesellschaft exited the island and was simply replaced by another company: the Pacific Phosphate Company, whose assets on the island were later bought by the British Phosphate Commission.<sup>21</sup> This brief simplification does not do the complex legal relationships justice, however, so I will highlight a brief passage from the chapter to show how Storr expertly navigates the legal complexities of the relationships on the island as of 1907:

The legal interests in Nauruan phosphate were as follows: the German and British financed, British-registered Pacific Phosphate Company held an exclusive right in German law to mine phosphate on Nauru, under licence from a German company, within the colony of German New Guinea. Property in Nauruan phosphate purportedly vested in the Reich, whilst property in the land from which phosphate was to be mined was recognised as remaining with Nauruan landowners, under Nauruan law.<sup>22</sup>

While the relationships are certainly complex and are largely based on expropriated European conceptions of title, Storr does not concern herself much with these complexities. Her point is that, despite the fluidity of Nauru’s legal status, the administrative procedures being used would later be the basis for the modern and flawed state, and that no matter the legal status, the administrative machine stayed relatively consistent, even across empires.

Chapter four begins with Nauru classified as a C Mandate of the British Empire as determined under article 22 of the Covenant of the League of Nations.<sup>23</sup> The British held administrative power over the island after the 1919 Nauru

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18. *Ibid* at 46.

19. *Ibid* at 100.

20. *Ibid* at 158.

21. *Ibid* at 159, 201.

22. *Ibid* at 131.

23. *Ibid* at 161.

Island Agreement, with the collaboration of Australia and New Zealand.<sup>24</sup> The basic administrative relationship on the island was that an Australian-appointed Administrator was installed and “rendered the office financially dependent on the new British Phosphate Commission, which had no obligations of financial transparency to the Administrator, and therefore to the Permanent Mandates Commission to which the Administrator reported.”<sup>25</sup> Eventually, after Japanese occupation, the island became a United Nations Trust Territory in 1947, but as Storr notes, this legal shift once again did not change, but rather built on, the underlying basic structures already present on the island: “At the administrative level...the shift from mandate to trust territory status in 1947 prompted further accretions in the basic structure of relations established under German rule in 1888, and developed under Australian administration from 1920.”<sup>26</sup> However, while the basic principles of exploitation remained similar, what was changing was the way in which the people of Nauru would be able to participate in the system that had oppressed them thus far.

Chapter five examines the shift of Nauru from trust territory to independence, which was achieved in 1968.<sup>27</sup> Storr writes that it was the “juridification of the regime of international trusteeship and its reorientation around the end of ‘self-government or independence’ [that] provided the institutional apparatus and conceptual vocabulary through which the Nauruan people, led by Hammer DeRoburt, prosecuted their case for political independence from Australia in the UN Trusteeship Council.”<sup>28</sup> Yet again, Storr’s main objective is to show how the administrative state, which came into being in the 1880s, remained and actually was, perhaps ironically, expanded upon independence; for example, she says, “The recasting of the existing Nauruan administration as a constitutional republic did not dismantle so much as further expand upon the existing structure of relations first established in the late nineteenth century to facilitate corporate resource extraction.”<sup>29</sup> The colonial administrative machine continued upon Nauru’s independence as Australian consultants rapidly drafted a constitution for the new nation, which was based in the Westminster style. The new constitution, as Storr argues, only continued the administrative systems of colonization and exploitation, risked “conflation of executive and legislative power; excluded the

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24. *Ibid.*

25. *Ibid.*

26. *Ibid.* at 162-63.

27. *Ibid.* at 204.

28. *Ibid.*

29. *Ibid.*

commercial phosphate operation from public administrative oversight; and failed to establish financial transparency regarding the phosphate operation itself, and the disposal of phosphate royalty trust funds.”<sup>30</sup> In many ways, with the benefit of hindsight, Storr’s analysis has sadly proven to be true. Throughout the latter half of the twentieth century, the island continued to be exploited for its phosphorus, with little eye to the future, and this exploitation led to a progressive abandonment of the rule of law on the island.<sup>31</sup>

The story does not have a happy ending for the nation of Nauru, but to look at the nation as an exceptional or anomalous state is a mistake. As Storr writes, Nauru is not a “parable of future collapse or an island dystopia.”<sup>32</sup> Rather, Nauru belongs in the contemporary international order and has been shaped by administrative processes that had the same underlying expectation of exploitation that began in 1888, notwithstanding the legal relationships along the way. By using the example of Nauru to showcase the “sobering appraisal of the statist paradigm of decolonisation,” Storr effectively argues that as international status shifts, administrative form accretes—and this crucial relationship between status and form becomes visible in a place that could be thought of as merely a small and unimportant island.<sup>33</sup> In fact, Storr shows how even this small nation is fairly emblematic of the processes occurring around it within the international order. Not only does Storr achieve her objectives; she does so with an extremely well-researched, succinct, and readable account of the complex administrative and legal histories of Nauru.

However, no work is perfect, and I would be remiss if I did not address one main issue that I noticed throughout the monograph. Namely, while the centre of the analysis is intended to counter narratives that the origins of the Republic’s trajectory lie with the Nauruan community, and the monograph is dedicated to the people of Nauru, we see and hear little of them throughout. Of course, there are the gruelling stories of living under Japanese occupation and the Geelong educational program developed by W.A. Newman; but aside from these notes, remarkably few of the people of Nauru are given agency to speak about their own experiences here.<sup>34</sup> To her credit, Storr acknowledges the potential problems with her monograph, writing, “This is a European story, not a Nauruan one. The Weberian account of bureaucratisation that shapes the narrative works at

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30. *Ibid* at 209.

31. *Ibid* at 247, 254.

32. *Ibid* at 13.

33. *Ibid* at 25-26.

34. *Ibid* at 174, 189.



times to drain the book of the colour and movement of human agency – and most crucially, of Nauruan agency.”<sup>35</sup> In fact, Storr seems to have made the omission very deliberately, noting that the space that she is writing in “remains open for accounts of that history, on Nauruan terms.”<sup>36</sup> Yet, at the same time, while the criticism is pre-empted in some ways by Storr’s explanation, I am left somewhat unsatisfied with it, mainly because of the referendum I mentioned at the beginning of this review. My unease with Storr’s response comes from the fact that, assuming no tampering with election results or corruption, when the people of Nauru had the option to make a change to the cycle of their own—as well as their island’s—exploitation, they voted two-to-one *against* it.

To me, the result of the referendum speaks to one of two competing theories. On the one hand, it can speak to how the administrative state can become so entrenched that the people involved become dependent on it or are blind to its realities; but this once again removes the agency of Nauruans and makes a patronizing assumption that Nauruans voted against the referendum because they simply did not know what was best for them. I do not believe this explanation. On the other hand, Nauruans could have voted against the referendum for their own reasons, but reasons that we are not able to comprehend through this monograph. This is the likely answer, but it also means that there is something missing in the monograph, where it appears difficult to reconcile Nauruans as political actors and also as workers exploited by their colonial overlords. Or, to put the point another way, it is potentially not possible to neatly decouple the notion of administrative exploitation from the participation of individual actors, as much as Storr would like. I can certainly appreciate Storr’s dilemma. As a member and product of a colonial nation, it would not seem right to tell the story of the Nauruan people. At the same time, their experiences are a vital part of the island’s story, which still could have been discussed within the confines of the objectives of the monograph and would have made for a richer and potentially more nuanced picture of the administrative complexities and continuation of Nauruan exploitation.

There are no easy answers to the criticism I have laid out here, but it should not take away from what is a thoroughly enjoyable monograph, which should be recognized for its readability, depth of research, and novel approach to the field of international legal history. Storr’s work is certainly to be lauded.

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35. *Ibid* at 37-38.

36. *Ibid* at 38.

