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INTERNATIONAL LEGAL THEORY

SYMPOSIUM
LAW BETWEEN GLOBAL AND COLONIAL: TECHNIQUES OF EMPIRE

Introduction

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The deep relation between the colonial past and contemporary international law has been convincingly established. Scholars from diverse backgrounds, employing a variety of approaches, have shown the multifaceted ways in which the colonial enterprise occasioned the birth of doctrines and practices that are still in common use.[1] The conference that occasioned this symposium, the last of the project *History of International Law: Between Religion and Empire*, directed by Martti Koskenniemi, was held in Helsinki in October 2016 and approached the issue of the colonial legacy of international law from the point of view of specific histories. The 'techniques of empire' raised at the conference encompassed colonial governance in the broadest sense, looking at practices, norms and normative systems, doctrines and concepts, and events. The case studies making up the articles featured in the symposium treat subjects as diverse as the experiences of colonialism have been, assuming an array of forms. Even so, from the multiplicity of techniques certain patterns and themes emerge.

In the first place, the articles by Maria Adele Carrai and Kirsten Sellars show that techniques of empire are not unidirectional and roles in colonial relations are not fixed. Carrai explains how Chinese officials appropriated international legal language to assert sovereignty over Tibet in the early twentieth century. The doctrines employed by Western powers against China in the era of unequal treaties were then turned around to keep the British at bay and justify the hierarchical position the Chinese government claimed over Tibetan institutions. As Carrai warns us, to

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1 We mention just a few classics and important contributions in a now rich and diverse body of literature: A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); M. Koskenniemi, *The Gentle Civilizer of Nations* (2002); A. Orford, *Reading Humanitarian Intervention* (2003); L. Nuzzo, *Origini di una Scienza: Diritto Internazionale e Colonialismo nel XIX Secolo* (2012); M. Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615* (2006).

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gloss over the ability of non-Western powers to effectively deploy techniques of empire might result in yet another Eurocentric history. In addition, her description of the British Empire's use of suzerainty confirms the value of critical scholarship for uncovering the use of international legal doctrines as Western techniques of domination. In a historical study of the transplant of politico-legal categories into the international order, Sellars speaks of Indian soldiers' resistance to criminal charges of treason in British India. Sellars' article is, however, much more than that. It is both a story of the importance of the history of international criminal law for the decolonization process and, at its core, a timely message of hope about the international order and its potential for realizing democratic aspirations and freedom.

In yet another illuminating reversal, Giladi reports the shock and protest over the French use of colonial troops to occupy the German Rhineland under the terms of the armistice at the conclusion of the First World War. France stationed between 25,000 and 40,000 African soldiers from her colonies, along the Rhine.[2] By remembering that immensely complex event known as the 'Horror on the Rhine', Giladi analyzes the fate of the racial rule on employment of 'savage troops' and the colonial war category itself. As he writes, the event tellingly raised accusations of barbarity and signaled a breaking point for the international legal system. Anxiety over racial violence and contamination burst forth, notwithstanding the factual reality of an orderly occupation undertaken by disciplined troops. However, France's violation of German territory appeared twofold in the eyes of the shocked German government: firstly, the occupation itself, and secondly, the use of colonial troops. Notwithstanding the outrage of many, natural coexistence led to relationships between the troops and natives in Germany. However, German and international campaigns depicted these relationships between black soldiers and German women in a dehumanizing manner, the women especially suffering harsh humiliation and public violence.[3] Ultimately, in the years 1937–1939 the Nazis carried out an illegal sterilization of between 500 and 800 children and youth born from these relationships. This measure symbolizes, tragically, the hysteria of an isolated Germany in the period leading up to the Second World War and ultimately shows who suffered the consequences of this particular legal technique of empire.[4]

This symposium is only a selection of the many excellent papers that were presented at the conference. The sophistication of those chosen provides us with a multi-layered and enlightening reading of the past, through legal events still relevant today. As conveners of this symposium, we hope to demonstrate for readers the significance of thinking in historical terms about techniques of empire in humanitarian law (Giladi), international criminal law (Sellars), and notions of sovereignty (Carrai).

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2 I. Wigger, '"Black Shame" – the Campaign Against "Racial Degeneration" and Female Degradation in Interwar Europe', (2010) 51 *Race and Class* 33–46, at 35.

3 Ibid.

4 These actions were discussed in 1937 within a 'Special Commission 3' of the State Secret Police (*der Geheimen Staatspolizei*). An anonymous commission formed by two doctors, one lawyer and two anthropologic experts decided on the concrete measures. According to Eckart 'the sterilisation was illegal', and took place 'in a space absolutely without law' ('*im absolut rechtslosen Raum*'). W.U. Eckart, *Medizin in der NS-Diktatur, Ideologie, Praxis, Folgen* (2012), 130–1.

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