

## BOOK REVIEWS

*Empire's Law: The American Imperial Project and the "War to Remake the World"*  
Edited by Amy Bartholomew..... Irina Ceric

*The Culture of Flushing: A Social and Legal History of Sewage*  
By Jamie Benidickson..... Marcia Valiante

*Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration*  
Edited by Rebecca M. Bratspies & Russell A. Miller..... Stepan Wood

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*EMPIRE'S LAW: THE AMERICAN IMPERIAL PROJECT AND THE "WAR TO REMAKE THE WORLD"* EDITED BY AMY BARTHOLOMEW (LONDON: PLUTO PRESS, 2006) 381 pages.<sup>1</sup>

BY IRINA CERIC<sup>2</sup>

International law, and more specifically the juridical fall out of the US-led "War on Terror,"<sup>3</sup> is a topic of abundant literature, both scholarly and popular.<sup>4</sup> In this crowded field, *Empire's Law* stands out as a rigorous and uniquely engaged collection. Editor Amy Bartholomew, of the Department of Law at Carleton University, has succeeded in compiling a volume that bridges academic and activist analyses. At the same time, this collection emphasizes the efforts of its contributors to formulate cogent strategies for moving beyond an international law

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<sup>3</sup> See e.g. Philippe Sands, *Lawless World: Making and Breaking Global Rules* (London: Penguin Books, 2006); Stewart Motha, ed., *Democracy's Empire: Sovereignty, War and the Constitution of Legal Order* (2007) 34 J.L. Soc'y (special issue); Michael Mandel, *How America Gets Away with Murder: Illegal Wars, Collateral Damage and Crimes Against Humanity* (London: Pluto Press, 2004).

<sup>4</sup> Approximately 700 books and 3,000 articles on international law are published each year: P. Malanczuk, *Akehurst's Modern Introduction to International Law* at 8, cited in China Miéville, "The Commodity-Form Theory of International Law: An Introduction" (2004) 17 *Leiden J. Int'l L.* 271 at 271.

regime seemingly marked by its inadequacy in the face of war and occupation. The wide range of experts included sustains the multifaceted character of the project, as human rights activists and UN and development agency veterans join the usual roster of legal and political science scholars. Their work is divided into four areas of analysis: a broad, introductory overview of various accounts of the US imperial project; a series of inquiries into the primary intersections of law and imperialism, including war, human rights, and international law; a more focused examination of recent developments in Iraq; and finally, an exploration of opportunities for resistance to empire. This breadth means that *Empire's Law* contributes to debates in fields ranging from International Relations and post-colonial legal theory to feminist approaches to international law and post-conflict studies. However, the collection's focus on the current conflicts in Iraq and, to a lesser extent, in Afghanistan, explored through the themes raised by the World Tribunal on Iraq's indictment<sup>5</sup> of the invasion and occupation of Iraq as a "war to remake the world," serves to link these divergent approaches.

*Empire's Law* provides an in-depth treatment of its titular concept, which emerges from and builds on previous scholarship. In an article also entitled "Empire's Law," Susan Marks explores the various concepts of imperialism informing Michael Hardt and Antonio Negri's prominent and far-reaching reconceptualization of nation-state imperialism. Hardt and Negri's "Empire" is a "decentered and deterritorializing apparatus of rule that progressively incorporates the entire global realm within its open, expanding frontiers."<sup>6</sup> Marks discusses two key earlier accounts of the relationship between imperialism and international law, found in Russian jurist Evgeny Pashukanis's Marxist analysis and Antony Anghie's post-colonial reconfiguration. She argues that Pashukanis foregrounds the extent to which international law has been shaped by capitalism, thereby positing imperialism as primarily economic, while Anghie's interrogation of the colonial origins of international law locates imperialism in European subjectivity and non-European exclusion.<sup>7</sup> Accordingly, Marks is able to link the character of the "new logic and structure of rule, a new form of

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<sup>5</sup> See *infra* note 30 and accompanying text.

<sup>6</sup> Michael Hardt & Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2003) at xii [emphasis removed].

<sup>7</sup> Susan Marks, "Empire's Law" (2003) 10 *Ind. J. Global Legal Stud.* 449 at 460.

sovereignty,”<sup>8</sup> which is at the heart of Hardt and Negri’s “Empire,” to the historical role of international law in constraining the exercise of power and authority by colonial peoples. Concluding that sovereignty appears “as the right to decide what counts as justice ... [and] the right to define what counts as peace,” she contends that it is now “all the more important to sort the imperialist legacies from the anti-imperialist potentials, and the imperial tendencies from the post-imperial pressures, within international law.”<sup>9</sup>

The questions raised by Marks’s appealing yet exploratory analysis of international law and imperialism are taken up in much greater detail in *Empire’s Law* through differing theoretical and conceptual approaches towards the political, economic, cultural, and legal elements of the “American Imperial Project.” The book does not hold out any one definitive characterization of empire’s law, although Bartholomew’s contribution provides a cogent starting point: “an attempt unilaterally to constitute and impose an illegitimate and unaccountable form of rule by a global power that seeks to arrogate to itself the role of global sovereign by declaring itself to be the exception.”<sup>10</sup> In her excellent introduction, Bartholomew also engages specifically with the book title’s deliberate play on and adoption of Ronald Dworkin’s “felicitous phrase.” Law’s Empire—defined, at least in principle, as “internally legitimate in terms of its principle of impartiality, and not an empire ‘of men’”—is transformed into a “far more menacing” empire’s law marked by “attacks on and subversions of such ancient legal principles as *habeas corpus* to the principle of innocent until proven guilty, as well challenges to the *jus cogens* norms against the unilateral use of force and torture.”<sup>11</sup>

Nehal Bhuta’s incisive and original piece, “A New Bonapartism?” adds a further juridical dimension by re-examining the provenance and evolution of the idea of “belligerent occupation” and its “legal-conceptual” significance to the project of “transformative occupation” in Iraq.<sup>12</sup> Finally, in his ambitious chapter exploring modes of ordering global political relations, imperial and otherwise, Peter Swan succinctly locates empire’s

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<sup>8</sup> Hardt & Negri, *supra* note 6 at xi.

<sup>9</sup> Marks, *supra* note 7 at 466.

<sup>10</sup> Amy Bartholomew, “Empire’s Law and the Contradictory Politics of Human Rights” in Bartholomew, *supra* note 1, 161 at 163 [Bartholomew, “Contradictory Politics”].

<sup>11</sup> Amy Bartholomew, “Introduction” in Bartholomew, *supra* note 1, 2 at 2, 7.

<sup>12</sup> Nehal Bhuta, “A New Bonapartism?” in Bartholomew, *supra* note 1, 193 at 194.

law “in the paradoxical situation of a state acting beyond its own domestic law and international law in the name of preserving the proclaimed values of civilization and humanity.”<sup>13</sup> To some extent, these accounts cover well-trod territory, particularly with respect to current debates on the status of the Geneva Conventions, the role of the UN Security Council, and the continued relevance of other legal instruments implicated in the “War on Terror.” Yet Bartholomew, Bhuta, and Swan, among others, push *Empire’s Law* beyond questions of legality by crafting analyses that serve to link current violations of international law to established and emerging understandings of imperialism, empire, and sovereignty.

Other contributors emphasize different elements of empire’s law, shifting their focus from the legal aspects of war, occupation, and imperial military power to the imperial potential of cultural and political imports. Haifa Zangana’s chapter, “The Three Cyclops of Empire-Building: Targeting the Fabric of Iraqi Society,” persuasively makes the case that US and UK government-sponsored NGOs, “colonial feminists and missionaries bear the face of ‘soft power’ which advances just behind the steel of ‘hard’ military power.”<sup>14</sup> Following a succinct overview of Iraq’s colonial past, she demonstrates that the “penetration and pacification” required for a successful reconstruction of Iraqi civil society is a method of establishing “not a relation of colonialism” but a form of imperialism aimed at the fabric of civilian life.<sup>15</sup> Zangana’s account adds a crucial empirical element to the more juridically focused examinations of the occupation of Iraq, and further underscores the need to consider international law norms in their historical context. In his chapter examining democratization, international law and sovereign equality norms, Andrew Arato also takes up questions of political culture. He suggests that imperial democratization is marked by the alienation and instrumentalization of “soft power,” particularly when the demands of “*their* autonomous but not necessarily liberal democracy” run up against the expectations of occupying powers.<sup>16</sup> Together, their nuanced

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<sup>13</sup> Peter Swan, “American Empire or Empires? Alternative Juridifications of the New World Order” in Bartholomew, *supra* note 1, 137 at 145.

<sup>14</sup> Haifa Zangana, “The Three Cyclops of Empire-Building” in Bartholomew, *supra* note 1, 245 at 260.

<sup>15</sup> *Ibid.*

<sup>16</sup> Andrew Arato, “Empire’s Democracy, Ours and Theirs” in Bartholomew, *supra* note 1, 217 at 219 [emphasis in original].

discussions linking Iraq's geopolitical importance to the trajectory of domestic development and democratization provide important examples of the intersecting economic and cultural modes of imperial rule.

It is the book's first substantive chapter, however, that most successfully ties together these various strands of empire's law. In a piece forcefully arguing for the continued viability of state-centered imperialism while accounting for competing claims of the empire and new sovereignties, Leo Panitch and Sam Gindin undertake a serious theorization of the American Empire. Their object is to explain an "imperialism capable of accounting for the central role that the American state has come to play in the global capitalist order."<sup>17</sup> In doing so, they build on their previous work on law and the US imperial project. Particularly, they reiterate their claim that "[l]iberal-democratic ideas, juridical forms and political institutions lent some credibility to the claim that even American military-imperialist interventions were about human rights, democracy and freedom."<sup>18</sup> It is difficult to do justice to the depths of this analysis in a book review, but two key points are worth mentioning. The first, already alluded to, relates to the unique centrality of the United States as an imperial power and the resulting need to redraw existing theorizations of imperialism. The second considers the particular significance of American juridical forms in constitutional, commercial, and other areas of law for the consolidation of the mechanics of neoliberalism (namely the expansion and deepening of markets), as both transnational economic policy and a "*political* response to the democratic gains that had previously been achieved by subordinate classes."<sup>19</sup> In other words, Panitch and Gindin remind us that as much as public international law is generally seen as bearing the brunt of imperialist state action, domestic legal systems regulating economic and social relations may be equally representative of empire's law.

The two forms of American imperial statecraft—"penetration and incorporation on the one hand, policing and intervention on the other"<sup>20</sup>—articulated by Panitch and Gindin also take into account

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<sup>17</sup> Leo Panitch & Sam Gindin, "Theorizing American Empire" in Bartholomew, *supra* note 1, 21 at 25.

<sup>18</sup> Leo Panitch & Sam Gindin, "Superintending Global Capital" (2005) 35 *New Left Rev.* 101 at 108.

<sup>19</sup> Panitch & Gindin, *supra* note 18 at 31 [emphasis in original].

<sup>20</sup> *Ibid.* at 21.

Bartholomew's "Empire's Law and the Contradictory Politics of Human Rights."<sup>21</sup> She especially highlights the arguments made by "human rights hawks," such as Michael Ignatieff, as a further evolution of imperial practice, one which combines "the potentially cosmopolitan aim of securing universal rights ... with the agency of a self-appointed imperial power."<sup>22</sup> In crafting her devastating critique of the imperial potential of human rights, Bartholomew also engages with Jürgen Habermas's contribution.<sup>23</sup> She points to his assertion that "[b]enevolent unilateralism is deficient in terms of a lack of legal provisions for impartiality and legitimacy"<sup>24</sup> as an example of "law's empire as an antidote to empire's law."<sup>25</sup> The problem, however, is that despite the editor's attempt to engage more deeply with the conclusion of Habermas's piece—which can be summarized as a recognition of "the universalistic core of democracy and human rights that forbids their unilateral realization at gunpoint"<sup>26</sup>—his analysis rests on an incomplete sketch of the historical moment. This is when the United States abandoned its role as the "pacemaker for progress" toward a cosmopolitan legal order and guarantor of international rights, thereby leaving its normative authority lying "in ruins."<sup>27</sup> Habermas concedes that the seeds of the "Bush Doctrine" are found in the emergence of the United States as a global power after the Second World War. However, read as a whole, his reading posits the international law consequences of the invasion and occupation of Iraq as a definitive break with the past, a claim of newness vigorously contested by numerous scholars and commentators writing from Third World and post-colonial perspectives.<sup>28</sup>

This rather unsatisfying contribution from one of the marquee names of the collection does not significantly impact *Empire's Law's*

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<sup>21</sup> Bartholomew, "Contradictory Politics," *supra* note 10.

<sup>22</sup> *Ibid.* at 171.

<sup>23</sup> Jürgen Habermas, "Interpreting the Fall of a Monument" in Bartholomew, *supra* note 1, 44 at 50.

<sup>24</sup> Jürgen Habermas, "Dispute on the Past and Future of International Law: Transition from a national to a Postnational Constellation" (Paper presented to the World Congress of Philosophy, Istanbul, 2003) [unpublished], cited in Bartholomew, "Contradictory Politics," *supra* note 10 at 174.

<sup>25</sup> Bartholomew, "Contradictory Politics," *ibid.*

<sup>26</sup> Jürgen Habermas, *supra* note 24 at 50.

<sup>27</sup> *Ibid.* at 46.

<sup>28</sup> See especially Zangana, *supra* note 15; Obiora Chinedu Okafor, "Newness, Imperialism, and International Legal Reform in our Time: A TWAAIL Perspective" (2005) 43 Osgoode Hall L.J. 171.

overall distinction. Indeed, the brevity of this review precludes discussions of excellent chapters by Doris Buss, Reg Whitaker, and Trevor Purvis. The overwhelming merit and effectiveness of the book for scholars, students, activists, and lawyers alike is further solidified by its concluding section, "Resisting Empire." Building on Bartholomew's "commitment to a 'dualistic strategy' involving a defence and constitutionalization of international and cosmopolitan law while aiming at the development of a cosmopolitan global legal culture and the democratic legitimation of law,"<sup>29</sup> the final chapters of *Empire's Law* provide both concrete critiques of international law and compelling suggestions for its deployment as a legal and political tool. Jayan Nayar's accessible yet rigorous chapter on the World Tribunal on Iraq illuminates the structure, approach, and work of the Tribunal (an account which is itself a huge contribution in North America, where the Tribunal has received relatively little attention); it also draws out a people's law perspective centered on reclamations of histories, futures and political action as one attempt to "theorize ... resistance."<sup>30</sup> Fuyuki Kurasawa sets out on an equally bold intellectual project by attempting to carve out a third way of understanding humanitarian intervention as "weak interventionism." He rejects both "muscular humanitarianism" and "anti-imperialist absolutism" in his quest to preserve the possibility of addressing massive human rights violations without instrumentalizing such intervention in the service of the American empire.<sup>31</sup> Creativity and commitment to justice is evident in Nayar and Kurasawa's contributions. They ably avoid the token attempts at transformative prescription or strategy often found in the concluding paragraphs of international law literature, and further the liberating potential of law's empire while reinforcing our understanding of the injustice underlying empire's law.

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<sup>29</sup> Bartholomew, "Contradictory Politics," *supra* note 10 at 182.

<sup>30</sup> Jayan Nayar, "Empire's Law, People's Law and the World Tribunal on Iraq" in Bartholomew, *supra* note 1, 313 at 320.

<sup>31</sup> Fuyuki Kurasawa, "The Uses and Abuses of Humanitarian Intervention in the Wake of Empire" in Bartholomew, *supra* note 1, 297 at 299.