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NASSER HUSSAIN. *The Jurisprudence of Emergency: Colonialism and the Rule of Law.* Ann Arbor: The University of Michigan Press, 2003. 194 pages.

COLONIAL RULE IN INDIA promised to extend constitutional rights to native subjects. Crown courts exercising appellate jurisdiction over penal- and public-law disputes were endowed with the lofty task of spreading the common law to a native population. In this book, Nasser Hussain examines what went wrong with this very British version of a "civilizing mission."

Hussain explains how long-standing doctrines establishing rights of citizens were undermined by "the jurisprudence of emergency." The recourse to "emergency" was the reason behind the withering away of high court powers in Calcutta, Madras, and Bombay to demand that lower courts issue writs of *habeas corpus* (public declarations that formally accused a detained person with a crime) during the nineteenth century. It was also the chief justification behind the Rowlatt Act (1919), which sanctioned the imposition of martial law in India in the aftermath of the Amritsar Massacre. In opposition to the Act, the lawyer Gandhi launched the civil disobedience movement, which famously exposed the hypocrisy behind the suspension of civil liberties in British India. Despite independence, Gandhi, sadly, did not have the last word. Hussain argues that this jurisprudential doctrine remained a legacy of colonialism. Pakistan and Indian courts have frequently used the doctrine to allow executive power and military authority to suspend constitutional governance and to run roughshod over citizens' judicial rights while couching their decisions in the language of the common law and citing to hallowed authority (Brackton, Locke, Mansfield, Dicey, etc.). The doctrine arguably boomeranged back to the British Isles in the form of the Northern Ireland Emergency Provisions Act (1973) and the Prevention of Terrorism Act (1974). It has been recycled in international law to sanction military invasions of foreign countries by ex-colonial powers promising to guaranty liberty and bring civilization to the underdeveloped and unconverted.

The grand question is how did this powerful concept of "emergency" worm its way into and poison the common law? Race and Orientalism provide a starting point. In accordance with Montesquieu's *Spirit of Laws*, a bible of enlightened legal reformers, Asians were prone to "despotic" government, meaning one in which the executive was not checked by an autonomous judiciary. The British eventually espoused more evolutionary concepts than those of Montesquieu, who had insisted that climate determined a form of government. To the British, geography (or race) did not condemn subjects of the crown to eternal despotism, but it did put them at a disadvantageous starting point. Only under proper care and assiduous nurturing could their condition be overcome. Many believed that inculcating the precepts, nuances, and mysteries of the common law was a moral obli-

gation of the colonizers, a lengthy project that would require patience and perseverance. The problem was that colonial subjects simply had not evolved to the stage of legal consciousness that the English had possessed upon receiving the Magna Carta. This meant that law must be imposed from above (even in codified form) as an immediate form of political pedagogy. This was a fundamental point of agreement for thinkers who disagreed so frequently as James Fitzjames Stephen to John Stuart Mill.

Once "law" had been theorized as a "process" -rather than a unshakable system of justice consisting of a set of normative rules derived from either a social contract based on reason or an unwritten constitution founded in time-immemorial custom predating conquest (Norman, imperial, or otherwise)- the stage was set for the periodic interruption of this process to attend to a competing but equally important tutelary obligation: guarantying the "safety of the people." In the case of martial law, the naked exhibition of military force was also deemed in and of itself edifying. It helped inculcate a "habit of obedience," an awareness of the existence of the state as sovereign authority, an original condition that subjects needed to attain before being declared fit to enter political life. In practice, the use of martial law acted as the common-law equivalent of a continental declaration of state of siege, an edict issued by a sovereign body allowing the army to usurp the jurisdiction of civil courts. In theory, however, martial law was framed within the language and logic of the common law itself. It permitted publicists and apologists to continue to claim -genuinely or disingenuinely- that granting rule of law to the colonies was, and remains, one of the everlasting legacies of the British empire. Reality was that the frequent use of emergency powers made normalcy an increasingly precarious situation. To be sure, rights were not pre-established but adjudicated (or not adjudicated) post-hoc and dependent on the judicial or executive interpretation of the state of affairs.

Hussain's method is to examine case law first developed in England and then transplanted in the colonies. He also pays much attention to scholarly commentary and political and military discussions of precedent-setting cases and seminal legislative acts. In most instances, common-law doctrines were changed and undermined, if not turned on their heads, by clever hermeneutics when moved overseas. The book does not address the quotidian operation of law on the ground, or how law and the courts were perceived by those who were not experts, including the colonized, or what happened to those whose rights were undermined, or even to what extent they aware of the jurisprudential niceties of what was going on. Doctrine, discourse, and ideology of the rulers are its chief concerns. The author frequently devolves into extended exegesis on the work of H.L.A. Hart, Michel Foucault, Walter Benjamin, Carl Schmitt, and others. This allows him to situate the study within larger debates on the meaning and function of law in the modern world. He succeeds in appealing to two audiences: scholars of the theory of law and those of the history of imperialism. The result is a dense, rich, and multi-layered

book, one that is not that easy to penetrate upon initial overview and tends to meander onto (thought-provoking) tangents, but one that can be periodically revisited as a point of theoretical departure on the complex problematic of rule of law in a colonial setting.

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