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Insanity, Crime and Responsibility Cases: A View of Common Law from the British Empire

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followed the lead of the actors and institutions by enforcing the innovative practices structured through contracts.

This is an ambitious, dense book that is obviously the culmination of a lifetime of scholarship and research. Cranston knows and references the secondary literature and the judicial decisions, but it is his use of archival material that is truly exciting. Trade association and company directors' minute books, solicitors' opinions, standard form contracts, contract books, agency agreements, and more provide an in-depth and on-the-ground view. For the study of commercial practice this is incomparably superior to the distorted picture provided by confining oneself to reported decisions and normative legal or commercial treatises. As Professor Cranston points out, a lot of trade occurs without resort to the courts, so that a »case-centred approach neglects […] the types of commercial transaction which have been rarely litigated« (1).

Of course, the book has certain self-imposed limits. It is a study of the sale of goods and trade finance with a focus on commodities. It skips over contracts of carriage, the history of corporations, and most consumer sales. Cranston does not engage with underlying economic conditions beyond mentioning the impact of major wars and the Great Depression. His book takes for granted England's imperial position, but he leaves the study of the interplay between imperial politics and economics and trade to others.

As with any work of history, the story begins at a certain arbitrary point, and the phenomena discussed in the book are sometimes implied to be new. They were not always new, however. Trade associations, agency, long-distance foreign trade, commodities exchanges, bills of exchange, letters of credit, and banks had existed for centuries by the time Professor Cranston picks up his story. Yet by the 19th century, these institutions and practices seem to have grown into quite different things from their earlier permutations. The novelty of legal doctrines addressing many of these practices during the period Cranston discusses raises questions about how they interacted with the law in earlier periods and how the practices themselves changed in the early 19th century. Cranston's book has now told the end of the story, providing a basis from which other historians can work backwards to study the earlier periods.

A final note to the publisher: a large, well-sourced book like this truly needs a bibliography!

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Insanity, Crime and Responsibility Cases: A View of Common Law from the British Empire*

Catherine Evans' monograph, *Unsound Empire: Civilization and Madness in Late-Victorian Law*, teems with tales of horrific and tragic killings mined from across four archival sites of the British Empire in the 19th century – England, Canada, Australia and India. At the center of the narrative are the men and women apprehended for these criminals acts. Evans tracks them as they were moved in and out of courtrooms and asylums, rendered into objects of legal briefs and medical records, while their psychic status prior to, during, and after they killed their victims, remained uncertain from the perspective of both medical diagnosis and legal deliberation. She narrates their life stories from the perspective of the judges, lawyers, physicians, and social scientists who grappled with

* Catherine L. Evans, Unsound Empire: Civilization and Madness in Late-Victorian Law, New Haven (CT) / London: Yale University Press 2021, 290 p., ISBN 978-0-300-24274-4

the problem that these prisoners repeatedly posed to Victorian criminal justice: Could a person be convicted for a crime if it was unclear whether they could be held sufficiently responsible for the act?

The question of »criminal responsibility« or *mens rea* was, and continues to be, a central preoccupation of criminal law and justice. *Unsound Empire* explores how »responsibility cases«, a shorthand Evans uses to identify »cases in which a defendant's sanity was at issue« (4), put into the sharpest relief the uncertainties about human agency and mental capacity that troubled legal assessment of criminal culpability in Victorian murder trials. The lack of moral scruple and self-control that the prisoners displayed in these cases, particularly when they showed no visible signs of cognitive impairment, also confounded Victorian alienists, pushing them to devise new and protean diagnostic categories that articulated unevenly with legal definitions of insanity. While law searched for clearly defined, stable, and enforceable parameters for sifting a sane person from an insane person and thus the guilty from the innocent, new developments in the Victorian mental and evolutionary sciences thoroughly thwarted this search, proposing insanity variously as a heritable, social, or civilizational malaise, rather than a disease afflicting individuals. Evans masterfully traces how as the 19th century drew to a close, the law and the (mental and social) sciences spoke more and more at cross purposes as British justice teetered between two perilous pitfalls: inadvertently punishing the innocent and / or letting the guilty off the hook.

Evans explores the ramifications of Victorian medico-legal responsibility controversies on an imperial canvas. In the introduction, she situates her book within post-imperial studies, a growing field of critical revisionist scholarship less inclined to ask (and even less to lament) why the once mighty British empire collapsed, than to wonder at the resilience of an enterprise that bristled throughout its course with internal contradictions. If the legal history framework distinguishes the book from studies of mental diseases undertaken by historians of science and medicine, the imperial scale at which Evans has pursued her research questions sets *Unsound Empire* apart from existing accounts of legal responsibility. Within Britain's expansive empire, whose »external frontiers« drew together disparate cultures, peoples and social mores – often deemed less evolved and thus less legally responsible than the white male Briton – »[t]he mind«, Evans contends in her crisp and evocative prose, »emerged as the Victorian Empire's vast internal frontier« (3). At the limits of sanity, the twin pillars of law and science on which the vaunted civilizing mission of Britain's imperial ambitions rested, tottered.

The book chapters demonstrate how »the bare assertion that a person was a British subject could not answer the question of his or her mental competence« (3). At one end of the spectrum, in the Victorian metropole, widely accepted popular stereotypes about gender and class diluted legal parameters for determining mental capacity in murder trials – Evans' exploration of infanticide by women, especially mothers (chapter 5) deserves appreciation for nuance here. At the other end, as the discussions on infanticide in British India (chapter 6) and the so-called ›wendigo psychosis‹ in colonial Canada (chapter 8) show, in Britain's colonies, the difficulties of investigating instances of homicide that seem to interweave with cultural practices of the colonized people increasingly pushed colonial legal and medical authorities to double down on the language of »cultural pathology«. The strongest and most compelling chapters, which does justice to the imperial scale of Evans' research, weaves together stories from the metropole and multiple imperial jurisdictions (chapter 3). The chapters that showcase a single imperial jurisdiction (chapters 2 and 6), however, tend to delve too deeply into fleshing out the institutional (colonial judiciary and judicial services) and discursive (emergence of medical jurisprudence) context, often at the expense of advancing the central argument of the book; they stoke but do not quite satisfy curiosities about »the robust circulation of legal concepts in the empire« (4).

Although framed as a critical history of empire, *Unsound Empire* is most riveting when readers get to see Evans flexing her analytical muscles as a socio-legal historian. Her central contention, similar to the arguments of many historians who have studied the intersections of law and colonialism, is that English law served at once as the »premier organizing instrument«, the »ideological core« (4) and »moral heart« (7) of British imperialism, and a site where the vulnerabilities and anxieties of the British imperial enterprise also ultimately became visible. But this is not an analysis of imperial ideology that takes law as merely a backdrop. Evans builds her arguments about the interlocution of

law and empire by attending closely to the inner workings of common law, showcasing both the diversity and unity of legal norms, institutions, and practices across different colonial settings.

The British legal historian A. W. Simpson, whose work Evans cites in her introduction, maintained that in common law »the relationship between judicial decision, free will, and abstract doctrine, has long been the subject of a theoretical dispute which shows no sign of ending«.[1] *Unsound Empire* is an elegant examination of these abiding internal tensions and torsions of common law, using the leading case method, which Simpson adapted from law school pedagogy for legal historical analysis, to its full effect. While the 1843 M'Naghten rule – that serves till date as the most authoritative articulation of a common law legal definition of insanity – forms the spine around which the monograph is built, a series of individual cases – some precedent-setting by effect, and some, by design, propped to test legal rules – provide its flesh and bones. Borrowing tools from scholars who take the law-in-action approach to study law, Evans' analysis, too, proceeds by playing one (stable legal rules) against the other (dynamic litigation). And finally, invoking the methodological commitment of sociolegal analysis, she brings into the narrative all the relevant contemporary scientific debates on mental disabilities to reckon law »as an arena of conflict within which alternative social visions contended, bargained, and survived.«[2] This dynamic comes through most effectively in chapter 4, which tracks the Irish-born, Melbourne-based lawyer Marshall Lyle, who picked a series of test cases from a colony, and corresponded with the leading 19th-century criminologist Cesare Lombroso, in his mission to challenge the M'Naghten rule at the Privy Council in London. Students of legal history have much to learn from this book, although it would have been useful to have a note from the author, perhaps in the introduction, on the rationale that guided her selection of cases. Quibbles aside, at its best, Evans' examination of the changing nature of insanity defenses in Victorian courts is an instructive account of how common law legal institutions (colonial and imperial court systems), culture (trans-imperial networks of lawyers and judges), and procedure (the sequence of appeals and use of legal precedent) can be made to do double duty in historical analysis, as both contextual information and methodological tools.

The blurb of the book lays out the stakes that responsibility controversies had for some of the (most powerful and prominent) historical actors in *Unsound Empire*, especially the Victorian empire builders: »Could British civilization survive if killers avoided the noose?« The book offers an astute and critical historical perspective on questions about Britain's imperial legacy that have regained political currency post-Brexit. However, Evans hints at a story of survival that is far more interesting: not that of »British civilization« at all, but of English common law. Analyzing the remarkable resilience of common law institutions that continue to thrive even now in a host of former British colonies, long after the end of empire, is not the central concern of this book: the title makes it clear that Evans is interested in »late-Victorian law«. But by showcasing a crucial historical juncture when the principles of English common law gradually traveled out of a tiny North Sea island to find home (and even to thrive) in far-flung places across multiple continents, the book throws up questions about the nature of common law as an imperial, rather than a parochial English, institution that give historians of law and empire much to think about. ›Victorian law‹, after all is a species of the genus ›common law‹.

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1 A. W. Brian Simpson, Leading Cases in the Common Law, Oxford 1996, 1.
2 Hendrik Hartog, Pigs and Positivism, in: Wisconsin Law Review (1985) 899–935, 930.