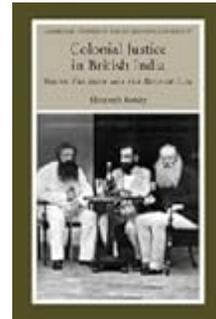




Elizabeth Kolsky. *Colonial Justice in British India: White Violence and the Rule of Law.* Cambridge: Cambridge University Press, 2010. 266 S. \$95.00 (cloth), ISBN 978-0-521-11686-2.



Reviewed by James Jaffe

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Commissioned by Christopher R. Waldrep (San Francisco State University)

Crime and Punishment in Colonial India

Elizabeth Kolsky's new book seeks to redefine and expand our understanding of the violence inherent both to colonial rule and the colonial system of justice. As this work makes clear, especially to those who recently may have neglected some of the violent realities of imperialism, beyond and beneath the brutality of war and conquest, beyond and beneath the hyperreality of colonial discourse, and beyond and beneath the imaginaries of empire, there lay the quotidian violence that often characterized the relationship between rulers and subjects, masters and servants, whites and blacks, Britons and Indians.

Perhaps it would be best to locate this work within the context of the social history of British imperial law. That is, like some of the best practitioners in this field, such as Douglas Hay or Christopher Tomlins, the author attempts here to combine a history of law as legislation with a history of law as practice. Thus, this book also shares much in common with the goals and objectives of the academic traditions of legal realism and law-and-society studies, although, it must be said, the large body

of work done in these fields does not appear to have directly informed this study.

Kolsky's book focuses on what is labeled "non-official" violence; that is, the violence perpetrated by white Britons residing in India, but who were unconnected either to the East India Company before 1857 or the British government thereafter. Thus, the book opens with an attempt to assess the extent to which white Britons in early colonial India were able to act with a significant measure of immunity from both civil and criminal prosecution. As was perhaps the case in all late eighteenth- and early nineteenth-century societies, there was a significant gap between the criminal law on the books and criminal activity on the streets and highways. There was, therefore, in India what Kolsky calls "a place of lawlessness at the center of law's empire" (p. 35). Of course, in Europe there is a long history of the people who inhabited these lawless spaces and the fears that they evoked among their more "respectable" betters. In eighteenth-century France they were the notorious "floating population"; in nineteenth-

century Britain they were the criminal classes or even criminal “races” of “darkest” London and other urban areas. Indeed, the book’s breadth may have been improved by tracing the European lineages of these persistent patterns of nineteenth-century social analysis.

In India, some of these same social conditions and social issues were reproduced in the guise of wandering British soldiers, sailors, and petty merchants. However, the Indian case was also distinctly different in that the people who inhabited these “lawless” spaces also included landowners, employers, and masters whose “impunity” was derived not only from the bureaucratic weaknesses and inadequacies of the fledgling police state, but also from the bifurcated system of justice that provided for a separate judicial treatment for white Britons. Kolsky’s discussion here rests on the analysis of several criminal cases brought against whites during the late eighteenth and early nineteenth centuries.

While many of the cases discussed undoubtedly substantiate the author’s contention that whites received preferential treatment in the courts, it nonetheless may be argued that it is somewhat misleading and perhaps inaccurate to employ such terms as “lawlessness” and “practical impunity from prosecution and punishment” to describe the situation (p. 35). Horrific and brutal as the cases described here are, their history is nonetheless recovered from British court records and thus bear witness to the active prosecution and often conviction of white settlers. Without doubt, the British courts in India were often inept and even more often biased and unfair. This was the case in Britain as well, as many political radicals and trade unionists found out to their dismay during this same period. However, the author also relates several instances of criminal transportation, imprisonment, and deportation of white settlers, enough at least to suggest that both “lawlessness” and “impunity” do not accurately describe this situation. Indeed rather than characterizing British settlers’ legal position as enjoying “practical impunity from prosecution,” a more accurate term for this situation may have been that white settlers possessed certain legal “immunities.” Such an analysis of the situation may have helped to deepen and expand the author’s discussion of British law and empire by recognizing that such legal exemptions and immunities were neither unique to these imperial circumstances nor uncommon in nineteenth-century British law.

To explicate these issues further, the focus of the book shifts to an analysis of the debates surrounding the 1861 Code of Criminal Procedure and the Indian Evi-

dence Act of 1872. In both instances, the resistance of the white “non-official” community played a significant role in deflecting government attempts to introduce “an equal and uniform law of jurisdiction” for both Britons and Indians (p. 106). Instead, British subjects eventually were guaranteed the privilege of appearing before European judges and thus were permitted to avoid having their cases heard in the common local courts which were staffed by Indian judges and magistrates.

There are at least two interesting and connected arguments being related here. The first, which is duly covered throughout this book, is the constant tension that characterized the relationship between white British settlers in India and the official British or company establishment. This was not only true in the case of important legislation, such as the infamous debate surrounding the Ilbert Bill, but also in the cases of the prosecution of white violence. As Kolsky shows, both the company and the British government were keen to rein in white settlers, planters, and other British residents, and often perceived these groups as significant threats to colonial rule. In the author’s estimation, this “non-official” white community constituted the “third face of colonialism” alongside the faces of British officials and Indian subjects.

As an interpretive construct, this “third face” is both an interesting and important element of the book because it brings to the fore the very complicated dynamics that characterized imperial rule. As the author notes, these settlers often performed a valuable economic role in the empire, but at the same time they often threatened the company’s and government’s ability to control India. However, it must also be said that colonial rule operated within a field of force that had many more than three poles and that there is a tendency here to rhetorically conflate the diverse and sometimes dissonant voices emanating from the other faces within India.

The second argument concerns the role and discourse of race. There is little doubt that race played perhaps the single most prominent role in the construction of the late nineteenth-century judicial system in India. However, the discussion here tends to elide late nineteenth-century “scientific” notions of color-based racial identity with those of the early and mid-Victorian period. In the latter cases, ideologies of race sometimes encompassed color, but they also sometimes indicated nationality, religion, ethnicity, or occupation. Notoriously, Victorians designated the Irish a “race” while British coal miners were frequently described as “a race apart.” Henry Mayhew’s great sociological survey of the London poor pub-

lished in 1851 variously referred to the Jews as a race, the costermongers as a race, and the match-sellers as a race. This is certainly not intended to discount the importance of color-based definitions of race in the construction of colonial law or to argue, *vide* Cannadine, that race was less important than class. Color-based distinctions undoubtedly became especially prominent in the later Victorian and Edwardian periods. However, during the early construction of British rule, this may not have been equally the case, and a more nuanced analysis of the discourse of race as it was variously understood and applied in the early and mid-nineteenth century seems appropriate here.

The final section of the book moves away from the analysis of legislation and returns to a discussion of individual criminal cases, most especially several of the ju-

dicial cause cÅ©lÅ“bres of the late nineteenth and early twentieth centuries. Here, the author appears to be on much firmer ground, and the explication of the politico-racial dynamic between the government, white “non-officials,” and Indian nationalists presents both a tragic and convincing story.

This book, therefore, has much to offer. It opens a new window into the nature and complexity of British imperial rule. The excavation of the problems posed by the “non-official” white community in India is a welcome addition to the literature. Despite the reservations expressed here, this work adds to our understanding of the extent of violence inherent to white rule in India and contributes to a broader understanding of crime and justice under the British raj.

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