only recently beginning to be considered. No doubt they will be followed up by other scholars.

doi:10.1017/S0738248022000608

Michael Lobban, *Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa*

Cambridge: Cambridge University Press, 2021. Pp. xii, 450. $120.00 hardcover (ISBN 9781316519127); open access pdf (ISBN: 9781009004848).

Erin Braatz

Suffolk University Law School
ebraatz@suffolk.edu

Michael Lobban's book *Imperial Incarceration* provides a sweeping examination of British detention of political prisoners during nineteenth-century colonial expansion in Africa. Lobban asks "how and how far colonial administrators followed the rule of law" when detaining such prisoners (33). The case studies he provides urge a fundamental rethinking of the usefulness of the concept of the rule of law in the context of a British imperial system that relied upon, even while it manipulated, legal categories.

Lobban invokes three distinct contrasts to guide his comparative approach. The first is between two versions of the rule of law: a formalist (or in his terms "strong") and a substantive (or in his terms "weak") version. He argues that the substantive or weak version entailed "not the details of English law. . . but rather its animating spirit," which British officials may have taken into the colonies with them (3). The second set of contrasts is between "lawfare," in which "law itself became the tool of conquest and oppression" (15), and a version of the rule of law in which "legality [was] apt to impinge, and to constrain" official action (39). In this second contrast, it is not always clear if Lobban is building off the previous set of contrasts, or presenting a new one: does lawfare operate within the framework of the rule of law as he traces it in the first set of contrasts, or does it present an example of something entirely outside of that structure? The terminology suggests the latter, with lawfare being the absence of meaningful legal constraint on official action, although in his account, it often appears as the former, with lawfare being either a complement to or an explanation for a weakening (but not elimination) of formalist rule of law protections. Third, in asking why officials adhered to any version of the rule of law, Lobban contrasts two different types of constraint on official

action in the colonies. The first he terms an internal constraint, imposed by the bureaucratic system that shaped British action abroad (in his account, "detention was not a policy dictated from the centre. It was generally driven by the demands of officials on the ground" (419), but those officials ultimately always reported back to the center). He contrasts this with external constraints imposed by various civil society actors either in the colonies or in London.

These two types of constraints, Lobban contends, pushed officials at varying times toward greater or fewer legal protections for detainees. But he also suggests a more troubling reason for this variation in legal protections, arguing that stronger adherence to the rule of the law "was likeliest to occur where those subjected to exceptional measures were regarded as being part of the political community" (33). He provides examples of this dynamic in the Cape Colony, "a settler colony, with an established judicial system" (38) and in Egypt, where "with the eyes of domestic public opinion firmly on the case, the British government strove to ensure that [Ahmed] Urabi would obtain a fair trial, which would satisfy the demands of British justice" (125). On the other hand, "where rebels were not seen as part of the same political entity, but were regarded more as [Carl] Schmittian 'enemies,' the culture of common law due process had much less purchase on administrators and judges" (34). A quintessential example here is Sudan, where Al-Zubayr Rahma Mansur's "detention in Gibraltar was rendered lawful by simple legislative fiat" (157), an approach that was repeated frequently in West Africa with *ad hominem* detention ordinances being the norm, rather than the exception.

There were moments when I wish that Lobban were more critical of events and of his sources. Outside of political necessity and its own imposed legal system, Britain had no basis for any of these detentions (that is, after all, how Lobban chose his case studies). Given that, at times Lobban's language seems surprisingly sympathetic to colonial officials. For example, he argues that "[o]fficials in London were constantly aware of expectations that their actions had to comply with the rule of law, and their consciences were often pricked by the demands of the common law tradition when dealing with African political prisoners" (34), even while his case studies all too often point in a less sympathetic direction. In perhaps the most concise framing of the book's overarching argument he states: "the imperial authorities were insistent that the rule of law would be seen to have been followed" (105), suggesting a desire to perform, but not necessarily follow, the rule of law.

The incredible nuance and complexity of Lobban's work derives in part from his cross-colony comparative approach. This approach is unique in African legal history, and Lobban's study demonstrates its value. While this work should be read by anyone seeking an understanding of law in empire or a close examination of the functioning of the rule of law, it should also be read for its methodological innovation in modeling for us all how to perform compelling comparative work.

doi:10.1017/S073824802200061X