

BOOK REVIEW

Jörg Fisch. Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Code, 1769-1817. Wiesbaden: Frans Steiner Verlag, 1983.

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While the history and workings of the civil law in India have been well studied, (see Derrett, 1968 and 1976-78), criminal law has received much less attention. Perhaps this disparity is due to the more or less total supplanting of any indigenous criminal laws with the enactment of the Indian Penal Code in 1860, which made the earlier systems relevant only to historians. In contrast, separate Hindu and Muslim "personal" laws still regulate matters of marriage, inheritance and adoption for most of the population of India, and the prospect of "reforming" these laws, and ultimately achieving the Uniform Civil Code called for by the Constitution (Art.44) is a hardy political topic (Derrett 1978; Mahmood 1976).

The work by Fisch, then, is a welcome contribution. Fisch's topic is the reform of the criminal law in Bengal before the Indian Penal Code was even proposed (1837) and long before its promulgation. He sees these reforms as having set the stage for the successful promulgation of the IPC, and indicates that many of the more important innovations of the IPC were actually already introduced by 1817.

Fisch's thesis is provocative. He shows how the British justified their transformation of the indigenous criminal law by stressing the harshness and irregularity of that law: its provisions for punishment by mutilation or painful forms of execution, and its dependence on private action to initiate proceedings. The British claimed to be instituting a law that was both more humane (mutilation was largely eliminated as a punishment) and more just, as it was to be applied more uniformly. Fisch neatly turns the evaluative tables on the British by showing that their uniformity probably lead to more brutality (i.e., increased executions), and

that their punishments, especially imprisonment and transportation, were not clearly more humane than those envisioned by the earlier, Muslim system. Without expressly invoking him, Fisch seems to be taking the perspective of Edward Said (1979): that European scholarship on Asian cultures is, and has always been, biased towards showing the superiority of the cultures of the colonizers over those of the colonized.

Fisch is on firmest ground when he argues that the punishments permitted by the British were no more humane than those allowed by the Muslim law. One is left to ponder whether a regime of more executions, imprisonment and exile was indeed any more humane than one of few executions, some mutilations and much "composition" of offenses through fines and restitution.

Less convincing, however, is the argument that the Muslim law in Bengal was really exceedingly mild, because it covered very few situations and because its harshest provisions were restricted by procedural rules (e.g., the provision of death for adultery by married Muslims being conditioned on evidentiary requirements so strict as to render conviction virtually impossible). The implication is that the new British laws were more harsh as they were more likely to be applied in more circumstances. The comparison is complicated, however, because of the existence under the Muslim system of what Fisch calls "extraordinary justice", punishments not envisioned by the formal Muslim law, but sanctioned by Muslim political powers as necessary supplements to that formal law. When Fisch grants the ubiquity of, and necessity for, this "extraordinary justice" under the Muslim system, he makes it inappropriate to compare the formal British laws with the formal Muslim ones; one needs instead to compare practice under both regimes. Perhaps because of the lack of necessary documents, Fisch does not essay such a comparison.

We are thus left with an interesting thesis that is not sufficiently tested. In the present work, Fisch has provided enough evidence to raise serious questions about the usual historical views of the introduction of the British criminal law in India: that the new British laws were more humane and just than the indigenous laws they supplanted. He has not, however, presented sufficient evidence to decide the point.

Finally, one curious flaw in the work must be noted. In his preface, Fisch notes that the new British laws "widely disregarded India's own legal heritage" (page v). This statement is of course true, but the Muslim law that the British replaced was not much more "Indian" than the new British laws. In the course of the book, Fisch makes only passing reference (page 5) to the fact that the majority of the Bengal population was Hindu. One may

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be justifiably sceptical about the importance of the Muslim criminal law to the Hindu population; considering the importance of the "extraordinary justice" to the analytical scheme of the book, this is not an unimportant question. Perhaps future scholars will pursue it, starting from the foundation that Fisch has provided.

References

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