

Introduction

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As the British empire extended its reach during the eighteenth and nineteenth centuries, Western (specifically British) concepts of law and justice were exported around the world. As the empire retracted in the twentieth century, a residual legal order was left in its wake: the common law. In many colonies and British territories, the early twentieth century was a time of uncertainty. As the roles of the imperial Parliament and the Judicial Committee of the Privy Council changed, national legal systems began to emerge.

This special issue is dedicated to exploring the complex and often paradoxical heritage of British colonial rule and law in relation to numerous jurisdictions, namely the Pacific Islands, Africa, Ireland, Australia and Canada.

Focusing primarily on the area of Family Law, Sue Farran's paper, "Paddling a canoe with an oar made of oak": the enduring legacy of British law in Pacific island states', examines the legal environment on the eve of independence in the south-west Pacific region and the continuing relevance of Britain's colonial legacy from the 1960s onwards. Although the influence of the English Bar and bench is no longer as immediate or direct as it was in the years of colonial rule or even in the years immediately following independence, justification for contemporary laws remains in British (or more accurately English) jurisprudence, despite its modification, hybridisation or even erasure in specific cases. Farran considers whether local law reform initiatives and the globalisation of laws are evidence of new forms of colonialism, especially legal colonialism. She concludes, however, that, just as a canoe can be paddled in more than one direction, so too might the continuing application of this colonial legacy in Pacific island courts lead to the development of a body of Pacific 'common law', which, in turn, may eventually influence English law.

In her paper, 'Courts and the emergence of statehood in post-colonial Africa', Rachel Ellett investigates the legal legacy of British colonial rule in the context of post-colonial state building in east Africa and concludes that this legacy cannot lay claim to an entirely positive or negative inheritance. The colonial/post-colonial legal institutions were, on the one hand, instruments of political power and manipulation. Yet, they were also sites of contestation and resistance and the ability of the courts to resist was both constrained and enabled by the colonial legacy. Moving beyond strict binaries, Ellett highlights the multifarious implications of the British legal legacy for various African courts, specifically those in Tanzania, Uganda and Malawi. These courts are theorised by Ellett as sites of simultaneous resistance and oppression, political contest and political censure.

Moving from Africa to Ireland, Thomas Mohr, in his paper "The Privy Council appeal as a minority safeguard for the protestant community of the Irish Free State, 1922–1935", traces the history of the appeal from the Irish courts to the Judicial Committee of the Privy Council as a purported safeguard for minority rights in the Irish Free State during the inter-war years. The significance of the Irish appeal to the Privy Council is often underestimated or ignored, especially as it relates to inter-denominational relations in the early years of the self-governing Irish state. Many historians and other commentators simply echo the claims of the Irish governments of the time that the overwhelming majority of Southern Protestants did not want this purported safeguard of their rights. Mohr challenges these positions, though, and illustrates the central importance of this appeal to the entire British Commonwealth in this period. In the end, Mohr's paper says much about the continued legacy and role of British colonial law in the years that followed the secession of much of the island of Ireland from the United Kingdom.

Gabrielle Appleby's "The evolution of a public sentinel: Australia's Solicitor General" outlines the British colonial tradition of 'Law Officers', focusing specifically on the development of the Australian paradigm of the Solicitor General (as Second Law Officer), which, to date, has been a largely untold story. Appleby chronicles three phases of the development of the Solicitor General position in the colonies: (1) the close mirroring of the British tradition; (2) the non-political, public-service position; and (3) the introduction of a quasi-independent statutory counsel position. This final phase, a uniquely Australian paradigm, emerged as the preferred model across all of the jurisdictions in the second half of the twentieth century and eventually became a specialist in high-level constitutional and public law advice and litigation.

Finally, Jonathan Swainger's 'Law and the practice of politics in the Canadian Department of Justice: completing confederation' examines the (dis)appearance of Britain through the regimes of practice in the early Dominion Department of Justice in Canada, 1867–1878. The department initially mirrored the approach to governance taken by Canada's first Prime Minister, Sir John A Macdonald, as that which emphasised tactics over legality and utilised law and its interpretation as statecraft in building a new nation. This approach, argues Swainger, reflected a confluence of law and politics that was a product of Canada's colonial history. Following the Liberal victory of 1873, though, through a combination of ministerial inexperience and the increasing presence of legally trained individuals, the Department of Justice took a more legalistic approach, one that favoured an activist Dominion approach to legal problem-solving. According to Swainger, this latter approach was less effective and, instead, truly effective statecraft was that practised at the confluence of law and politics.