13 Jurisdiction and the colonisation of sublime enjoyment

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> Lady J is pretty well; a tiger about a month old, who is suckled by a goat, and has all the gentleness of his foster-mother, is now playing at her feet. I call him Jupiter.
>
> (Cannon, 1970: 785)

> The question of the sublime was doubtless first of all an attempt to measure the decline of the Orient.
>
> (Deguy, 1993: 6)

Introduction

This chapter examines the category of the sublime as an essential component in initiating the phenomenon of jurisdiction. As shall be shown, the juridical appeal to the sublime legitimises jurisdiction. In order to extend its sphere of influence, jurisdiction refers to that which is beyond the secular and temporal domain of human beings.

In order to illustrate and analyse this thesis, this chapter focuses on attempts made by lawyers in the eighteenth century to extend the jurisdiction of the common law overseas. In particular, the problems faced by the courts of the East India Company in its Indian factories enabled Western jurisprudence to develop an idea of jurisdiction that was universal rather than territorial. In other words, such an examination places us in a position where we are better poised to understand the universal attachment to the law.

More specifically, this chapter highlights the manner in which lawyers employed by the East India Company during the eighteenth century referred to the idea of an Oriental sublime. As a descriptive category, the Oriental sublime is used to domesticate the East. It rendered the East (as the specific territory over which the East India Company sought jurisdiction) romantic and inhabitable. But the sublime also helped to connect archaic jurisdictions to its modern counterpart. Eastern and Western forms of authority were linked to a sublime time out of mind. It was here in the mists that the jurisprudence of an universal jurisdiction was born.

Asiatic Jones and the sublimation of Oriental scholarship

Under the administration of Warren Hastings, scholars such as Charles Wilkins and Nathaniel Halhed initiated studies into the Indian past. Having established the first printing press in India, Halhed published his *Grammar of the Bengali Language*, and Wilkins published the first translation of the *Bagavad Gita*. Ostensibly, such works were issued both to inform Englishmen interested in India and to 'conciliate the affection of the natives' (Halhed, 1776: xii). But there was more to these works, and the desire for exotic knowledge betrayed a deeper obsession with India that centred around the remoteness of its antiquity and the origins of its culture, religion and laws. Orientalist scholars, spurred on by such discoveries as the ancient cave temples of Elephanta, turned to the East in an attempt to calculate the origins of *all* culture. The caves of Elephanta, for example, were not simply dark, mysterious and terrifyingly colossal. Their sublimity also resided in the suspicion that their antiquity was thought to predate any known culture. The implication was that somewhere in the East existed the cradle of civilisation and that the clues as to its precise location was to be found in ancient Sanskrit texts (Drew, 1998: 199). Contained in this literature was a history that went further back in time than Christianity or even English time immemorial:

> I, who cannot help believing the Divinity of the Messiah, from the undisputed antiquity and manifest completion of many prophesies, especially those of Isiah, am obliged of course to believe the sanctity of the venerable books to which that sacred person refers as genuine (the books of Moses); but it is not the truth of our national religion, as such, that I have at heart – it is truth itself; and if any cool unbiased reasoner will clearly convince me that Moses drew his narrative, through Egyptian conduits, from primeval fountains of Indian literature, I shall esteem him as a friend for having weeded my mind from a capital error, and promise to stand among the foremost in assisting to circulate the truth which he has ascertained . . . I am persuaded that a connexion subsisted between the old idolatrous nations of Egypt, India, Greece and Italy.[1]
>
> (Jones, 1804a: 280–81)

Nature and the antiquity of the Orient are simply two forms of excess that excited the Oriental scholar. As Voltaire suggested, the Brahmin had 'sublime ideas' about the supreme being and the peculiar theocracy of Hinduism thus prompted Orientalist speculation on the sublime location of divine power.

These appropriately disparate forms of the sublime stimulated the work of the Welshman Sir William Jones, who was regarded perhaps as the most obsessed of all early scholars and about whom a few biographical points are apposite. Details about

1 See also Jones (1799a). It is interesting to note the range of eighteenth century English works suggesting the influence of Brahminism on ancient religious life in Britain. For a discussion, see Drew (1998: 50–51).

the life of William Jones (*c*. 1746–1794) suggest that his was one almost completely devoted to Eastern scholarship. Even before travelling to the East, he had published his *Grammar of the Persian Language* (1771) and *Poems, Consisting chiefly of Translations from the Arabic Languages* (1772). Any residual scholarly commitments outside this exotic field were dedicated only to the more mundane study and practice of law as a judge on the Welsh circuits (see Franklin, 1995).[2] Even so, it was the recognition of Jones' talents as an Orientalist by Warren Hastings which earned him an appointment as a puisne judge in the presidency of Bengal.

In Calcutta, the judge devoted much of his time to the study of various Oriental cultures: 'My daily studies are now, what they will be for six years to come, Persian and law, and whatever relates to India.'[3] His enjoyment of Oriental scholarship is expressed in hymn-like prose: 'as the thirsty antelope runs to a pool of sweet water, so I thirsted for all kinds of knowledge, which was sweet as nectar'.[4] It is sometimes expressed as 'infinite pleasure':

> If envy can exist with an anxious wish of all possible entertainment and reputation to the person envied, I am not free from that passion, when I think of the infinite pleasure which you must receive from a subject so new and interesting [as Sanskrit]. Happy should I be to follow you in the same track.[5]

Even the justification for his studies was Orientalised and his scholarly appetite was determined by, and surrendered to, a more despotic cause: 'The *Mahomedans* have not only the permission, but the positive command, of their law-giver, *to search for learning even in the remotest parts of the globe*' (Jones, 1804: 280–81). However, this compulsive obsession with studying as many things Oriental as he could commanded a certain price: 'I do not expect, as long as I stay in India, to be free from a bad digestion, the *morbus literatorum*, for which there is hardly any remedy, but abstinence from too much food, literary and culinary.'[6] Jones was to die in Calcutta from an inflammation of the liver.

In addition to his judicial tasks, Jones founded the Asiatic Society of Bengal in 1784. Modelled on the Royal Society, its aims were to 'furnish proof to our posterity, that the acquisition of [Indian wealth] did not absorb [our] attention, and that the English laws and English Government, in those distant regions, have sometimes been administered by men of extensive capacity, erudition and application' (Jones, 1799b: 205). Jones himself, the gentleman scholar-administrator, undertook full scale studies in the history, religions, customs, manners, geography, chronology, zodiac, mystical poetry and pastoral drama of

2 Although Franklin does suggest that Jones may have also initiated the society of the 'Druids of Cardigan'.

3 L 362, to Viscount Althrop 1783, pp 13–14. 'By rising before the sun, I allot an hour every day to Sanscrit, and am charmed with knowing so beautiful a sister of Latin and Greek.' (L 449).

4 L 464, 2nd Earl Spencer, p 747. The lines are in fact Jones' translation of a stanza from a Sanskrit poem.

5 Letter to Charles Wilkins, 24 April 1784.

6 L 382, to Patrick Russel, p 632.

India, and is recognised as having founded modern philology. He assiduously gathered a portfolio of icons, drawing images of Hindu Gods and symbols that would later haunt the Gothic imagination of those such as Thomas de Quincey. Broad and eclectic though his research was, its determining influence on imperial manners should not be under-estimated. It shored up respect for a fundamentally inaccessible set of cultures, and informed policy on the treatment of Muslims and Hindus. Yet such an obsessive and zodiacal inquiry, in order to at least be in touch with all forms of Oriental knowledge, betrayed a desire to accumulate a different type of wealth to that sustained by company officials. It may be that, as Edward Said has already argued, early Orientalism laid down a cultural foundation that enabled the establishment of colonial power. Information was to be managed so as to be understood and controlled. It ought to be remembered that the acquisition of knowledge was always already implicit in the idea of imperialism. In classical terms, the colonised world was to be understood as that which had 'fallen under inquiry', and the antecedents of Roman law implied the *imperium* to be a source of knowledge (Polybius, cited in Pagden, 1995: 19).

A distinction has to be drawn between the pleasure of study and the affective quality of the object studied:

> When I was at sea last August, on my voyage to this country, which I had long and ardently desired to visit, I found one evening, on inspecting the observations of the day, that India lay before us, and Persia on our left, while a breeze from Arabia blew nearly on our stern. A situation so pleasing in itself, and to me so new, could not fail to awaken a train of reflections in a mind, which had clearly been accustomed to contemplate with delight the eventful histories and agreeable fictions of this eastern world. It gives me inexpressible pleasure to find myself in the midst of so noble an amphitheatre, almost encircled by the vast regions of Asia, which has ever been esteemed the nurse of sciences, the inventress of delightful and useful arts, the scene of glorious actions, fertile in the productions of human genius, abounding in natural wonders and infinitely diversified in the forms of religion and government, in the laws, manners, customs, and languages, as well as the features and complexions of men. I could not help remarking, how important and extensive a field was yet unexplored, and how many solid advantages unimproved, and when I considered, with pain, that in this fluctuating imperfect, and limited conditions of life, such inquiries and improvements could only be made through the united efforts of many, who are not easily brought, without some pressing inducement or strong impulse, to converge in a common point, I consoled myself with a hope, founded on opinions, which it might have the appearance of flattery to mention, that if in any country or community, such an union could be effected, it was among my countrymen in Bengal, with some of whom I already had, and with most desirous of having, the pleasure of being intimately acquainted.
>
> (Jones, 1799d)

The phrases and metaphors used by Jones consciously engage with the themes of romantic sublime. The 'inexpressible pleasure' in the face of unexplored territories directly transferred on to the Orient the Burkean idea that ignorance incites the sublime passions. Typical of romantic sensibilities, the sublime Orient is expressed through the feminised descriptions of Asia ('nurse of the sciences, inventress of the delightful arts') and Jones directs our attention to the formlessness and excesses of femininity. Elsewhere, Jones is more explicit and suggests that 'the [mythology of] the Hindus and Arabs are perfectly original; and to my taste their compositions are sublime'[7] for the Indians are those 'who receive the first light of the rising sun' (Jones, 1799c: 51). That the study of the Orient produced such an 'infinite pleasure' was due not to the nature of study *qua* study but to the nature of the object of those studies. What is interesting about the above passage, however, is that there is a shift away from the feminine and unexplored sublime to the more mundane descriptions of a society of acquaintances. The thirst for knowledge, and the pleasures of Oriental scholarship, were rooted in the very idea of the sublime East. And, vice versa, 'inexpressible pleasure' turns into expressible pleasure as Jones seeks artistic reward by means of sublimation. The hidden, undiscovered and excessive forms of the East provided the initial motor propelling 'the delightful and glorious arts' and became the condition of the tamer pleasures of societal research, and of mastery through knowledge.

This simultaneous attraction and utilisation of the sublime can be traced over all the disciplines that form objects of Orientalist study. The architectural ruins of India, for example, were a key motif in the sublime imagination (Hodge's images stress the ruins and gloom of India, its supernatural atmosphere, the terror of *suti* and its landscapes):

> the remains of architecture and sculpture in India, which I mention here as mere monuments in antiquity, not as specimens of ancient art, seem to prove an early connection between this country and Africa; the pyramids of Egypt, the colossal statues described by PAUSANIAS and others.
>
> (Jones, 1799i: 221)

Indeed, India itself was characterised as the ruins of ancient and sublime civilisations (a common argument in contemporary literature was that the Indian civilisations had been ruined by Moghul mismanagement). Yet the architectural remains, and the ruin of India, were an excuse to dominate and rebuild the land. The suspicion that the Oriental despot embodied a limitless capacity of enjoyment, coupled with the unpredictable nature of alien manners, provoked the need to reconstitute a sense of order fashioned according to prim European standards. It was by controlling the mysterious sublime of the Orient that colonialism was to install jurisdictional control.

The category of the sublime provided the pivot around which both romantic speculation and imperial mastery revolved. This irresolute attitude towards the sublime was expressed time and again over different fields. Jones' position was

7 L 445 to Robert Orme, p 716.

not unique, and artists and philosophers were drawn to the East in search of romantic inspiration and those elements that lent themselves to sublime feelings. Yet, at the same time as submitting to it, this aspect of Orientalism, this process of sublimating the excess, yielded and mythologised British authority and was crucial to the extension of common law jurisdiction in the East.

The sublime antiquity and force of the law

> Menu sat reclined, with his attention fixed on one object, the Supreme God; when the divine sages approached him.
>
> (Jones, 1799e: 91)

The colonisation of the Oriental sublime must be understood, above all, as a symptom of jurisprudential thought. The process is, after all, the transference, or reassignment, of excess enjoyment into something more socially acceptable, and so it operates as a form of prohibition. Given this, it is not surprising to find the same jurisprudential concerns centred on William Jones' projects to translate Hindu laws. Just as he found 'infinite pleasure' in the study of Sanskrit and Hindu mythology, so too the study of Indian laws became an equally romantic pastime. 'Do you not agree', he wrote to Schultens as early as in 1774, 'that nothing should be more pleasant or noble than the study of native and universal law?'[8] Yet again, it was the object of study itself that satisfied the romantic desire for, and submission to, the sublime. As Jones observed, 'a spirit of sublime devotion … pervades the whole work [of Hindu law]'. On a more mundane level, however, these translations differed significantly from others such as his translation of Kalidasa's plays. In being directly applicable, this was a form of Orientalism which constituted the text as an object of knowledge, while also creating of the 'Indian' a subject of law. The totality of this exercise would have included 'six or seven law books believed to be divine with a commentary on each of nearly equal authority; these are analagous to our Littleton and Coke, next Jimut Bahur, the best book on inheritances; and above all a digest of Hindu law in twenty-seven Volumes precisely in the manner of the original digest'.[9] The project was never completed by Jones in its entirety; what survives are the Laws of Manu, translated in 1794 as *The Institutes of Hindu Law: Or, the Ordinances of Menu*.

What was so sublime, to Jones' mind, about the Hindu laws of Manu was that they were revealed and written down rather than composed and invented:

> It was not MENU who composed the system of law, by the command of his father BRAHMA, but a holy personage or demi-god, named BHRIGU who revealed to men what MENU had delivered at the request of him and other saints or patriarchs.
>
> (Jones, 1799f: 344)

8 Vol. I l.93 to Henry Albert Schultens, 1774, p 167.
9 L 447 to CW Boughton Rouse, p 722.

Menu, or Manu, was not simply the hand, or the amanuensis – he was, as it were, the first hand and the holiest of amanuenses! The law descends, having been promulgated 'in the beginning of time by MENU, son of BRAHMA, or, in plain language, the first of created beings, and not the oldest only, but the holiest of legislators'.[10] So old are these laws ('the laws [of menu] are considerably older than those of SOLON or even LYCURGUS')[11] that Jones declares himself to be 'lost in an inextricable labyrinth of imaginary astronomical cycles, *yugas, mahayugas, calpas, and menwantaras*, in attempting to calculate the time when the first MENU, governed this world, and became the progenitor of mankind'.[12]

While clearly interesting from an Orientalist point of view, it is unclear why, *as a lawyer*, Jones would wish to allocate any legal authority to a high Hindu text such as Manu. A number of reasons, simultaneously practical and ideological, are given by Jones, his contemporaries and modern commentators. It is important to analyse these given reasons in order to reveal the way in which they hang on the idea of the sublime and on the process of sublimation.

A 'best practicable system of judicature'

At one level of analysis, the codification of the original texts of Indian laws arranged according to scientific method simply eased the process of decision-making by judges of the Calcutta Supreme Court. Apart from Jones, judges were unwilling to learn Sanskrit and were consequently ignorant of the laws they were applying to Indian subjects. Instead, they had to rely on the 'written opinion of native lawyers', and translations of particular laws were provided only when required. The inefficiency of this process of discovering and applying Hindu, or Muslim, law was increased by the lack of trust afforded to the relevant court officials: 'Pure integrity is hardly to be found among the Pandits and Maulavis.'[13] Copies of the work enabled British judges to avoid relying on these intermediaries and to detect any misinformation that these *pandits* and *maulavis* may have provided in the courts. In this sense, Jones' attempt to translate the law was symptomatic of the training of all common lawyers. The process of translating the Hindu and Muslim laws might be regarded as equivalent to that of legal education in the Inns of Courts, and simply provided direct access to what was hidden in the depths of an esoteric language. The secular lawyer assumed the mantle of the priest as guardian of a sacred text and of its meaning. Whether written in a 'strange tongue' or in English, a training into legal priesthood was, and remains, necessary in order to unlock the mysteries of legal knowledge (*arcana juris*) (see Goodrich, 1986). The hieroglyphic nature of law was regarded as universal. Translation provided the opportunity for the

10 Preface, p 76.

11 Preface to the *Hindu Laws of Manu*, p 78.

12 Preface, pp 76–77.

13 L 447 to CW Boughton Rouse, p 720. (It is pertinent that Boughton Rouse was then secretary to the Board of Control for India.)

lawyers of the Supreme Courts to have access to legal wisdom without the intermediation of the *pandits* and *maulavis*.

In strict doctrinal terms, however, the idea that a translation of indigenous laws would ease the judicial process of determining rules to be applied somewhat elides a more substantial point. It remains unclear as to why Hindu laws should be used in place of the common law, given that in 1608 the English courts had stated firmly that 'if a Christian king should conquer the kingdom of an infidel . . . the laws of that kingdom are abrogated'.[14]

On this point, a number of reasons were given for keeping intact the laws of the 'native' subject. For Nathaniel Halhed, it was a matter of following the antecedents of Roman imperialism:

> [The Romans] not only allowed their foreign subjects the free exercise of their own religion and the administration of their own civil jurisdiction, but sometimes, by a policy still more flattering, even naturalized parts of the mythology of the conquered, as were in any respect compatible with their own system.
>
> (Halhed, 1776: ix)

The following reason provided by Forbes, however, recognised the limits of imperial authority:

> It is impossible to separate the political tendency of laws from the genius of government from which they emanate. The spirit of the English constitution assigns to the mass of the people an extensive control over the exercise of public authority; and deems the executive government to be the representative of the public will. This spirit pervades the whole body of its laws; these laws necessarily reflect back and reproduce the principles from which they spring; and it is a matter of grave reflection should, that if this species of reaction should ever be produced in India, from that moment it is lost to this country for ever. The efficient protection of our native subjects in all the rights which they themselves consider to be essential to their happiness is certainly the most sacred and Imperious of all our duties . . . It is not the question, whether the English or the Hindu code of religion and jurisprudence be entitled to the preference; but whether the Hindu law and religion . . . are, or are not to be, maintained, or whether we are at liberty to invade both.
>
> (Forbes, 1988: 317)

According to Forbes, the 'invasion' of Indian law, and its replacement with the common law, did not form part of British imperialism. As Jones continually emphasised, such an agenda would have compromised the spirit of liberty that

14 *Calvin's Case* 1608. In *De Laudibus Legum Anglicae* (1773 edn), Sir John Fortesque remarks: 'I am convinced that our laws of England eminently excel, beyond the laws of all other countries.' (cited in Goodrich, 1990: 212)

was essential to the jurisprudence of the common law. In his recommendations to Edmund Burke for the 'Best Practicable System of Judicature', Jones observed that the replacement of Indian laws would have entailed a violent imposition of one institution upon another and would have implied that the English assume the despotic attributes of intolerance to which they were necessarily opposed: 'A system of *liberty*, forced upon a people invincibly attached to opposite *habits*, would in truth be a system of cruel *tyranny.*'[15] The *spirit* of liberty implied that the very system and set of institutions on which it depended could not be transferred to, and imposed upon, other cultures. However, the real paradox and irony of this sentiment was that, for these Hindu and Muslim subjects, the enjoyment of their own laws had to be sanctioned and determined by a foreign system, a foreign institution and foreign legislation:

> A legislative act [is needed] to assure the Hindu and Musselman subjects of Great Britain, that the private laws, which they severally hold secret and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance.[16]

This rhetoric of liberty, in other words, disguised the constitutional theory that there was *posited* a non-Indian geographical location of authority; the seemingly autonomous survival, existence and application of Indian laws hung upon a set of instructions relayed from London to Calcutta. And it should not be forgotten that behind this legislative authority lay an obvious ulterior imperial motive that involved buying the respect and affection of the Bengalis. These additional and superficial reasons for the preferential use of Hindu and Muslim laws, given by Jones in his letter to Burke, point to mercantile interests and the importance of maintaining good relations between the English (or, in Jones' case, the Welsh) and the subjects of Bengal:

> Any system of *judicature* affecting the natives in *Bengal*, and not having for its basis the old *Mogul* constitution, would be dangerous and impracticable . . . The natives must have an *effective* tribunal for their protection against the *English*, or the country will soon be rendered *worse than useless* to Britain.

Holding back the application of the common law was part of an established code of behaviour that sought to ensure the happiness and respect of 'the natives [who] are charmed with the idea of making their slavery lighter by giving them their own laws'.[17]

15 'Best Practicable System of Judicature' (L 387, to Edmund Burke).

16 L 485 to the Marquis of Cornwall, p 794.

17 L 558 to 2nd Earl Spencer, p 885. Consider, too, his remark that the 'three excellent things, which the ancients feigned to be the daughters of their supreme God, a good system of laws, a just administration of them, and a long peace will render this country a source of infinite advantage to Great Britain': L 397 to William Pitt the Younger, p 664.

Jones' reification of the spirit of liberty thus masks a motive for maintaining imperial authority through the judicial system: 'The Hindus are incapable of civil liberty; few of them have any idea of it; and those who have do not wish it. They must (I deplore the evil, but know the necessity of it) be ruled by an absolute power.'[18]

It might be argued further that the translation of a sacred Hindu text into English ensured the manipulation of that text. Sanskrit texts had their untranslatable words, and contained forms of signification and meaning unthinkable in an English idiom. Indeed, all projects of translation put signification and the status of the original into question. Translation necessitates mistranslation and glosses over the remnants of enigmas and puzzles which are impossible to solve. Where, to subvert Spivak's original argument (in Derrida, 1997), did Sanskrit end and English begin? Translating a legal text into English in order that its rules may be enforced in a court of law simply erases the ability of that text to speak in its own language, in a language other than that of the British court system. Hindu or Mohammedan laws were translated and tailored to fit British conceptions of justice. John Strawson makes the claim in relation to Jones' project of translating the *Al Sirajiyyah*. Islamic law, he suggests, was given legitimacy only 'by reference to European criteria which are taken almost as fact' (Strawson, 1995). Legal Orientalism thus denied and obscured the diverse literary traditions of both Hindu and Islamic jurisprudence.

What is at stake at this level of analysis is the use of the courts and the process of translation to manouevre and contain the law. It might be supposed, therefore, that Hindu law, for example, was to be kept as a mark of difference. Nations might be defined according to their laws, and their systems of interdiction, and so a Hindu was to be kept in his place and differentiated according to the law to which he appealed. The Hindus are Hindus by virtue of their laws. Certainly, the point is implied by Forbes in criticising early attempts by the English to abolish the practice of *suti*: 'If we are to govern Hindoos by their own laws, why do we tear them up by their roots, they are no longer Hindoos if they are subject to innovation.'[19]

The sublime universality of laws

But there was more to this process of translation than the control and manipulation of positive laws, and the 'staging of difference'. For Jones – and here his attitude was symptomatic of contemporary jurisprudential concerns – there was a genuine recognition of the spirit of Hindu law that actually refers him to similarities and connections between Eastern and Western notions of legality. Or, put slightly differently, the spirit of Hindu law refers to the other face of European legality that Jones and common lawyers such as Blackstone had been trying to recuperate throughout the eighteenth century. In what seems like a typical piece

18 L 443, pp 712–13.
19 Forbes (1988: 318).

of apologia, linking a system of laws to the manners and civilisation of its people, the following passage introduces Jones' recognition and obsession with the idea of legal sublimity:

> It is a maxim in the science of legislation and government that *laws are of no avail without manners*, or, to explain the sentence more fully, that the best intended legislative provisions would have no beneficial effect even at first unless they were congenial to the disposition and habits, to the religious prejudices, and approved immemorial usages, of the people, for whom they were enacted; especially if that people universally believed that all their ancient usages and established rules of conduct had the sanction of an actual revelation from heaven.[20]

While this idea of antiquity and sublime revelation is a feature of Hindu law, it also resonates with the reflections on the originary time and place of the common law that had been rattling around the minds of its own lawyers. It was common for eighteenth century doctrinalists to use the category of the sublime to describe the complexity, disorder and obscurity of the common law. For Blackstone in particular, this irregular form of the law was founded in an idea of nature from which England was to derive the law of the land. Like the sublime ruins of Gothic castles, churches and abbeys, the law was magnificent, venerable, winding, difficult, inspiring and at times neglected. Far from rendering common law defunct, the idea of neglect simply meant that it contained latent, undiscovered perfections. It was because of its sublime nature that the law was capable of evolving new and 'beautiful' solutions to problems: 'My system is formed; and I did not carry it *to* the law, but found it *in* the law.'[21] A second level of analysis, beyond the practical concerns of authority, has to be considered, and at this level the focus is on similarity rather than difference. That both Hindu and common law shared ideas about their beginnings, and celebrated their obscurity in similar ways, might seem like weak comparison, but to Jones and other Orientalists of the Asiatic society it implied that both systems may well have emerged from the mists of a common time immemorial, and a common place. It is at this mystical and sublime moment, whose precise time was lost in the labyrinth of astronomical cycles, that Jones saw the familial connection between Eastern and Western sources of law: 'The Hindus believe [their law] to be almost as old as creation. It is ascribed to MENU, the MINOS of India, and like him, the son of JOVE.'[22]

In this respect, eighteenth century jurisprudential claims that English law was to boost its legitimacy if it 'conformed to the norms of a community of legal systems' have to be remembered (Boorstin, 1996: 45). Familial connections were essential to the iconic and jurisdictional unity of the English law. As Jones himself

20 Preface to the *Institutes of Hindu Law*, p 75.

21 L 383, to 2nd Earl Spencer, p 634.

22 L 440 to Patrick Russell, p 706. See also L 464 to 2nd Earl Spencer where he describes Menu as 'the first created man, many millions of years old' (p 747).

puts it: 'The great system of jurisprudence like that of the Universe, consists of many subordinate systems, all of which are connected by nice links and beautiful dependencies.' (Jones, 1781: 173) In this sense, correspondences were even sought and found between the laws of Manu and Justinian's *pandectae* (1485):

> If we had a complete digest of Hindu and Muhammedan laws, after the model of Justinian's inestimable Pandects, compiled by the most learned of native lawyers, with an accurate verbal translation of it into English; and if copies of the work were reposited in the proper offices . . . of the Supreme Court, that they might occasionally be consulted as a standard of justice, we should rarely be at a loss for principles at least and rules of law applicable to the cases before us . . . The great work, of which *Justinian* has the credit, consists of texts collected from law-books of approved authority, which in his time were extant at Rome; and those texts are digested according to a scientifical analysis; the names of the original authors, and the titles of their several books, being constantly cited with references even to parts of their works, from which the different passages were selected; but although it comprehends the whole system of jurisprudence . . . that vast compilation was published, we are told, in three years; with all its imperfections, it is a most valuable mine of juridical knowledge; it gives law at this hour to the greatest part of Europe; and though few English lawyers dare make such an acknowledgement, it is the true source of nearly all our English laws that are not feudal in origin. It would not be unworthy of a British government to give the natives of these Indian provinces a permanent security for the due administration of justice among them, similar to that which Justinian gave to his Greek and Roman subjects. The labour of the work would also be greatly diminished by two compilations already made in Sanscrit and Arabick, which approach nearly in merit and in method, to the Digest of Justinian . . . The *Vivadarnava* [*Bridge over the Sea of Litigation*] consists, like the Roman Digest, of authentick texts, with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes taken from commentaries of high authority.
>
> (1804b: 796–97)

Even at the mundane level of individual rules of contract or inheritance, familial connections between the common law and other legal systems had to be sought and found. As Boorstin, commenting on Blackstone, notes: 'The ancient or foreign rule is first used to explain, and then to justify the English institution.' An example of this is provided by Jones:

> That the Hindus were in early ages a *commercial* people, we have many reasons to believe; and in the first of their sacred law-tracts, which they suppose to have been revealed by MENU many *millions* of years ago, we find a curious passage on the legal *interest* of money, and the limited state of it in different cases, with an exception, which the sense of mankind approves, and which commerce

> absolutely requires, though it was not before the reign of CHARLES I that our own jurisprudence fully admitted it in respect of maritime contracts.
>
> (Jones, 1799g: 42–44)

There was, then, no clear discrimination against this foreign legal order. The word 'foreign' simply meant 'ancient', and 'ancient' meant the possibility that at some time – beyond the time of memory – Hindu, Roman and common law systems were conjoined, or even identical to one another.

Furthermore, what was to prove beneficial to the imperial enterprise was that this universal law had universal jurisdiction and applied across the whole human race, irrespective of differences. That the Hindu code of laws was comparable to the *corpus iuris civilis* points to the place of the legal text in classical ideas of imperialism. These comparisons and connections appealed to the policy of the Roman *imperium* according to which the essence of legal authority devolved from the textual body of its laws. Similarly, Manu was to take the place of the Pandects as law's *ur*-text, and thus transfer its authority right across the globe. After all: 'Legislative provisions have not the individual for their object, but the species; and are not made for the convenience of the day but for the regulation of ages.' (Jones, 1799h: 3) Even in this age of reason, law was to be considered universal, beyond mere geography, and as deriving from and revealed by the gods. For Jones: '[Hooker's] idea of heavenly law is just and noble; and human law as derived from it, must partake of the phrase as far as it is perfectly administered.'[23]

The universality of law – so crucial to the idea of Empire – did not derive from differentiating Western from Eastern jurisprudence. It was, rather, based on their similarities – or at least a similarity insofar as both posited a mysterious and sublime cause at the centre of their institutional organisation.

The dread force of law

In the context of imperial jurisdiction, the sublimity of Hindu laws offered the English further advantages. The sublime was connected with power, and control over the sublime would be control over power: 'I know of nothing sublime,' states Burke, 'which is not some modification of power' (Burke, 1999: 69).[24] Or, as Jean-Luc Nancy puts it: 'In the sublime, enjoyment touches, moves, that is also commands.' (Nancy, 1993: 52) For Burke, and for later romantics such as Jones and Forbes, the sublime was rooted in objects obscured from sight; darkness, confusion, ignorance and terror are what excited romantic passions. As Nietzsche later put it, legal authority rests on 'the assumption that the rationale of every law is not human in origin, that it was not sought and found after ages of error, but

23 L 516 to John Shore, p 835. The text Jones refers to is 'of law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world'.

24 The same, incidentally, is to be said of the Kantian sublime, which commands and turns imagination into an instrument of reason.

that it is divine in its origin, completely and utterly without a history, a gift, a miracle, a mere communication' (Nietzsche, 1991: xv). To reveal the origins of law as something positive, as opposed to divine, would be to obviate its imperative tone. The original cause of law, in other words, had to act like the Oriental despot. Just as, for Burke, the dread of night and the fear of ghosts lay in their obscure forms, similarly the despot was one who exercised his form of justice in private: 'Those despotic governments, which are founded on the passions of men, and principally upon the passion of fear, keep their chief as much as may be from the public eye' (Burke, 1999: 836).

In evoking the sublime, it was to be the law, with its origins obscured among the labyrinths of a mystical and different temporality, that was to exercise power and replace the 'dread majesty' of the sultans. In terms of its power to declare the law, jurisdiction simply occupies the place vacated by the (deposed) sultans. Its power lay hidden beyond the call of its subjects.

The law-givers: Manu, Solon, Tribonian, Jones

The effect of sublimation thus converted the exclusive enjoyment of the sultans, and the obscene excesses of religious idolatry, into more acceptable and useful forms of control. The sublime allows power to emerge and to be 'posited' as legitimate force. However, just as super-abundant enjoyment is what distinguished the despot from his subjects, so too sublime power conferred a similar, but more acceptable, status on the legislator. As Deleuze and Guattari (1983) observe, the machinery of despotism is driven by the one who establishes a filial link between his subjects and a superior deity. The Oriental despot held a particular place as a mediator and messenger of the gods. According to Grosrichard, the despot had to submit to the law because to do so was to endow the law with universal characteristics (Grosrichard, 1998: 92–93) And, simultaneously, because the law was regarded as universal, it empowered him to act and speak imperatively. The law created the despot and the despot created the law. That the despot was simultaneously subject to the law, and in a unique position to create the law, might be characterised in terms of a split. This being so, it may be argued that this split is what allows the charisma of authority to emerge.

This same split economy of power, and of jurisdiction, is discernable if we analyse Jones' own position in relation to the law. In typical fashion, and throughout his writings, Jones maintained his submission before the law. In a letter to Earl Spencer, he declares his refusal to take sides in the battle between Burke and Hastings in the run-up to the latter's impeachment. Jones declared that his allegiances were only to aspects of the law. Thus he has 'an equity-*side*, a common-law-*side*, an ecclesiastical *side*, and an admiralty-*side*, but I am quadrilateral by act of parliament'. Jones' quadrilateral nature involves his submission to a higher cause: 'it is my sole duty to convey law as though a channel' (Grosrichard, 1998: 92–93).[25]

25 L 383, p 634.

Jones' subservient relationship to the law conformed to the correct manners demanded of its institution. Yet this passive position within the dogmatic structure of the law assigned Jones to a particular place that distinguished him from those other (pre-)colonial subjects of law over whom he held authority. He was not merely a passive recipient of the law, but a messenger and conduit of an already established truth. Jones himself recognised the power conferred upon him by power over his subjects. It was a power, he freely admitted, that made him tremble: 'All the police and judicial power, therefore, of this settlement, where at least half a million of natives reside, are in my hands: I tremble at the power, which I possess.'[26]

The simultaneity of passivity and authority is more pertinently discernable in relation to the translations of the legal codes. For here Jones was more than a judge: 'I speak the *language of the Gods* as the Brahmins call it, and am engaged in superintending a *Digest* of Indian law for the benefit of *twenty-four millions* of black subjects in these provinces.'[27] Jones conferred upon himself the status of a law-giver, and continually referred to himself as occupying the same position as that of Solon. Indeed, in the following passage, Jones admits to a position that Solon would have envied:

> I have the delight of knowing that my studies go hand in hand with my duty, since I now read both Sanscrit and Arabik with so much ease, that the native lawyers can never impose upon the courts, in which I sit. I converse fluently in Arabick with the Maulavi's, in Sanscrit with the Pandit's, and in Persian with the nobles of the country; thus possessing an advantage which neither Pythagoras nor Solon possessed, though they must ardently have wished it.[28]

Given that the sublimity of law renders it universal, the law-giver need not be Greek. And so, on occasions, Jones described himself as a reincarnation of Manu himself who, 'having written the laws of BRAHMA in a hundred thousand couplets, arranged under *twenty-four* heads in a *thousand* chapters presented them to the primitive world' (Jones, 1799e: 84). What Manu presented to the primitive world, the modern day amanuensis, Jones, was to present to the civilised world of European judges and governor generals.

But Solon's was not the only position he sought to occupy. In a private letter sent from Calcutta to London in 1786, Jones expressed his plans for the systematic translation and compilation of Hindu and Mohammedan laws. Here Jones likened himself to Tribonian, the compiler of the Justinian code, and declares that the mantle of Justinian himself was to fall upon his patron, Lord Cornwallis, the Governor-General of Bengal. The Maulavy Mujdudden is given the title *omni exceptione major* taken from Justinian's institutes.[29]

26 L 372, to 2nd Earl Spencer, p 623.
27 L 558, to 2nd Earl Spencer, p 885.
28 L 742; Teltscher (1995).
29 L 409, to John Macpherson.

The category of the sublime thus clears a space to be occupied by a mediating figure. As Pierre Legendre puts it: 'In theology, the power of God or absolute place of the mythical Third must always pass through a mediating figure – that of the pope, the emperor or the priest – before it becomes an object of subjective attachment.' (Goodrich, 1997: 262) Similarly, in Jones' imperial jurisprudence, it is the law-giver – Manu, Solon, Justinian or Jones himself – who occupies that charismatic position as mediator between the gods and his subjects.

Conclusions

Jones' translations of the codes of Manu illustrate that colonial legality was based on more than the desire to use law in the interests of colonialism. His projects and those of other Orientalists were built on a desire to master the origins of law. The attempt to extend the jurisdiction of the common law exposes a void at the origin of legal authority. For Jones, it was a matter of colonising this void so as to occupy it. The sublime provided that terrifying yet empty space from which to instruct and colonise the subject. It allowed the development of a rational legal system within the colonies.[30]

Yet, aside from the specific imperial concerns of the eighteenth century, these conclusions also illuminate a more general point about common law jurisprudence. The translation of Manu was not an attempt to recreate an alternative history of the law, but to ascertain the origins of law and the essence of jurisdiction. This project was not so much the reinvention of the history of law, but a rediscovery of the roots of all law. Similarly, these translations tell us more than the idea that the translated text was a product of discursive construction. The text (that which remains untranslatable) betrayed an order of legal dogmatism and hierarchy which Western legal institutions, in spite of their modernity, failed to successfully exclude. Colonialism – rather than being, as Marx had thought, a measure of modern industrial statecraft – marked the immediate demise of modernity.

Jones' failure to translate the whole of the ordinances might be regarded as symptomatic of the failure of the mind to grasp the sublime origins of the law; it is the failure to return to an experience that the mind cannot grasp. Nevertheless, this does not negate the importance of the sublime in understanding the relationship between the question of jurisdiction and the governance of (colonial) subjectivity.

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30 '[Science] embraces the whole circle of pure and mixed mathematics, together with ethics and law.' (Jones, 1799d: 6) Thus, in a letter to Edward Hay (L 584, p 916), Jones states that the 'laws of the ancient legislator are obscure when detached, yet clear when connected'. It is this process of connection that rationalises the Oriental sublime spirit of Oriental law.

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