BOOK REVIEW ARTICLE: INTERNATIONAL TERRITORIAL ADMINISTRATION AND THE MANAGEMENT OF DECOLONIZATION

International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away by RALPH WILDE [Oxford University Press, Oxford, 2008, 640pp, ISBN 9780199274321 (h/bk)]

The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond by CARSTEN STAHN [Cambridge University Press, Cambridge, 2008, 856pp, ISBN 978-052187-800-5 (h/bk)]

Humanitarian Occupation by GREGORY H FOX [Cambridge University Press, Cambridge, 2008, 336pp, ISBN 978-052185-600-3 (h/bk)]

How should international law respond to the following situation? A territory descends into a nightmare of widespread violence and civil war—its government unable or unwilling to take any action to stabilize the situation or protect its citizens. A new leader, backed by military forces, emerges. He claims that he will bring security to the people and property of the territory. In time he will also bring democracy and human rights, but these are luxuries that cannot be afforded while the new regime establishes law and order. The leader governs through a combination of executive and military rule—parliamentary government will also have to wait until the emergency has passed. The regime appoints judges on six-month contracts, describing them as 'tactical' weapons in the battle for control over the territory. It implements a system of executive detention, in which individuals who are deemed a potential threat to 'public peace and order' can be detained indefinitely with no access to family or lawyers. Even the International Committee for the Red Cross, famed for its discretion and neutrality, is denied access to certain detainees 'for reasons of imperative military necessity'. Amnesty International and other international observers release reports that are highly critical of the criminal justice system. The regime responds that '[h]uman rights principles should not be viewed as operating to dogmatically bar action that must be taken to address urgent security issues'. The new administration rapidly passes a series of broad-ranging regulations. Its first decree spells out that any existing laws that do not comply with its regulations will cease to apply in the territory. It deems many property transfers that took place under the previous government to be illegal, and engages in a massive and rapid redistribution of property in favour of particular groups. The government and all high-ranking officials are granted expansive immunities from civil and criminal jurisdiction, and the new administration refuses to accept that it is bound by the human rights treaty obligations entered into by the previous government. The administration continues to delay the conduct of elections, declaring that it is not prudent to hold elections without being able to predict and manage what will happen in their aftermath. Eventually, an election is held, one in which the voting system is designed to ensure that parties who disagree with the goals of the administration do not gain control of the parliament. Elected members of parliament who subsequently refuse to comply with the directives of the executive are dismissed. There must be no return to old customs or laws.

The question of how international law should understand and respond to such a situation is at the heart of three recently published books by Ralph Wilde, Carsten Stahn and Gregory Fox exploring the field of international territorial administration.[1] All the details set out

[1] R Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press, Oxford, 2008); C Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (Cambridge University Press, Cambridge, 2008); GH Fox, *Humanitarian Occupation* (Cambridge University Press, Cambridge, 2008).

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above were drawn from examples of international territorial administrations described in these books, and in particular the practice of the United Nations (UN) Operation in the Congo (ONUC) from 1960 to 1964, the Office of the High Representative (OHR) in Bosnia and Herzegovina from 1994, the United Nations Interim Administration Mission in Kosovo (UNMIK) from 1999, the United Nations Transitional Administration in East Timor (UNTAET) from 1999 to 2002 and the Coalition Provisional Authority (CPA) in Iraq from 2003 to 2004. Each of these books asks how international law should make sense of international territorial administration, a practice that has persisted in various forms for more than a century, from early experiments in joint authority and supervision of colonial government in the 19th century to the exercise of plenary authority by the UN and multinational administrations since the late 1990s.

Part 1 of this essay analyses the arguments developed in the three books. There are a number of similarities in the approaches taken by Wilde, Stahn and Fox. First, each aims to explore a phenomenon that is exemplified by the plenary administrations conducted by the UN in Kosovo and East Timor beginning in 1999, and to determine whether and to what extent that contemporary phenomenon has historical antecedents. They seek to map what Wilde describes as a 'new field of analysis' (p 1), and to determine its boundaries. Second, each author is self-consciously functionalist in approach, dismissing as anachronistic formalist concerns about the status of territories under administration. Thus while the authors all want to find some way to relate different instances of territorial administration to each other, they strongly resist the notion that these territories might have a common 'juridical status' (Wilde, p 105). Instead, each looks to history to find a sense of the deeper forces that give meaning to the practice of administration and thus to suggest what its 'function' might be. Third, each pays attention to the possibility that territorial administration might be imperialist in ambition or effect. They all deal briefly with colonial practice from the 19th century, but focus their attention on examples of administration beginning in the early 20th century. As this historical focus suggests, what emerges from these books is the relation of international territorial administration to a form of imperialism organized around international organizations and administrative rule.

There, fascinatingly, the similarity between the three books ends. Wilde, Stahn and Fox give three quite different answers to the question of how to make meaning of these recent events and of the work of law and history in doing so. For Wilde, international territorial administration is an institution premised upon the separation of title to and control over territory, and the idea that those who exercize control are acting to further the welfare of the people they govern. It is thus characterizable as a new form of international trusteeship. Wilde's dismissal of an out-dated concern with status questions, his lack of interest in legal practice and his positioning of himself as engaged in international relations rather than international law scholarship, means he leaves the juridical significance of this particular 'institution' or form unexplored. In contrast, Stahn provides a detailed exploration of the legal problems that arise in the practice of administration. From his book, a picture emerges of a form of executive and military rule, in which international officials enjoying substantial privileges and immunities remake the States they administer. Stahn embraces this practice as a form of cosmopolitan managerialism. Fox also welcomes this new form of expansive international executive rule, which he calls 'humanitarian occupation'. His book gives a sense of the revolutionary nature of this practice: revolutionary not only for the occupied States that are remade by international administrators but also for international relations. Fox argues that the Security Council has legislated to create a new law authorizing occupation in the name of humanity.

In Part 2 of the essay, I suggest that the meaning of international territorial administration is not to be found in some deeper, hidden system or project (trusteeship, cosmopolitanism, humanitarianism). Instead, I argue that the defining feature of international territorial administration is precisely its most visible characteristic—that it is a form of administration. There has been a great deal of recent work in international legal scholarship aimed at 'analysing global

governance as administration' in order to argue that global governance should be 'subject to distinctive administrative law principles'.[2] I am not proposing that these practices should be understood as administration in order to argue for their subjection to distinctive administrative law principles. Indeed, I suggest that a focus on administrative law principles of accountability and participation in this situation is part of the problem. Rather, I argue that understanding these practices as a specific form of governance (administration) with a particular history can help to make the political stakes of international territorial administration intelligible. In conclusion, I return to consider the answers that these books suggest to my opening question: how should international law understand and respond to the practice of international territorial administration?

I. INTERNATIONAL TERRITORIAL ADMINISTRATION: FROM FORM TO FUNCTION?

A. Ralph Wilde: International Administration as Colonial Trusteeship

Ralph Wilde suggests that a 'new field of analysis' emerged in academic and policy circles in response to the two international administration 'projects' conducted in Kosovo and East Timor from 1999 (p 1, p 20). Many commentators considered that those operations were unprecedented in their ambition and complexity. In the words of the UN's Brahimi Report, administrators in Kosovo and East Timor had to 'face challenges and responsibilities that are unique among UN field operations'.[3] In particular, those were the first UN operations that had been required to 'set and enforce the law, establish customs services and regulations, set and collect business and personal taxes, attract foreign investment, adjudicate property disputes and liabilities for war damage, reconstruct and operate all public utilities, create a banking system, run schools and pay teachers, and collect the garbage'.[4] Wilde, however, is critical of the treatment of these projects as 'exceptional' (p 234). He argues that they should be understood as the latest in a long series of related projects of administration stretching back to the early 20th century. Nonetheless, Wilde agrees with those commentators who treat international territorial administration as an 'activity worthy of analysis in its own right' (p 20). The question then becomes: how can the 'new field of analysis' be defined? What makes those projects distinctive?

1. The separation of ownership and control

Wilde spends much of the early part of the book rejecting the idea that the field might be defined in terms of the 'juridical status' of the territories under administration (105). This is an argument that he attributes to Méir Ydit.[5] According to Wilde, Ydit sought to establish that the goal of international territorial administration was 'the enjoyment of sovereignty-as-title' by international or foreign actors (p 43). Ydit's argument proceeded from the 'false premise' that '*de facto* control over territory, and *de jure* title to territory, are inseparable

[2] B Kingsbury, N Krisch and RB Stewart, 'The Emergence of Global Administrative Law' (2005) 68 Law and Contemporary Problems 15, 19.

[3] Panel on United Nations Peace Operations, Report to the United Nations Secretary-General (21 August 2000) UN Doc A/55/305-S/2000/809 (the Brahimi Report) para 77, cited in Wilde (n 1) 33.

[4] ibid.

[5] M Ydit, *Internationalised Territories from the 'Free City of Cracow' to the 'Free City of Berlin': A Study in the Historical Development of a Modern Notion in International Law and International Relations (1815–1960)* (Sythoff, Leyden, 1961).

(p 434).[6] Ydit wrongly treated as one concept 'two different relevant concepts' that is, 'the right of territorial ownership' and 'the right to exercize administrative prerogatives over territory', and assumed that formal sovereignty flowed from the exercize of territorial prerogatives (p 43). Wilde suggests that once we understand that sovereignty can be split into ownership and control, and that these two aspects of sovereignty can be vested in different entities, we can see where Ydit made his fundamental mistake. In his critique of Ydit and of formalist approaches more generally, Wilde relies heavily upon an argument made by Eli Lauterpacht in a 1956 survey of the contemporary practice of the United Kingdom (p 99). In that survey, Lauterpacht argued that it was necessary to 'distinguish between the two principal meanings attributed to the word "sovereignty"'.[7] First, sovereignty could mean 'the right of ownership' or 'the legal sovereignty'.[8] Second, it could mean 'the jurisdiction and control which a State may exercise over territory, regardless of the question of where ultimate title to the territory may lie'.[9] Although sovereignty as title and sovereignty as control were usually vested in the same entity, Lauterpacht could see no legal reason why that should be so.[10] The important question was who could exercize the latter form of sovereignty.

> The question of who has the residual legal title to [a territory] is of negligible importance in comparison with the question of who is entitled to exercise jurisdiction and control over it, to grant licences to prospectors seeking to ascertain the existence of its mineral wealth, or to regulate the exploitation of its natural resources.[11]

So here, at the dawn of decolonization, we see a British legal interpretation that splits sovereignty into two components—title and control. Wilde does not, however, ask whether Lauterpacht offered a controversial, novel, strategic or particularly British interpretation of sovereignty in 1956—nor whether it was one that Ydit might have been attempting to contest. Rather, Wilde suggests that Ydit's thesis was flawed because he understood these two meanings of sovereignty as necessarily related. This led Ydit to focus on the effect of internationalization on status, rather than analysing the 'nature of the activity' involved in administration. (p 102). Wilde argues that in fact international administration has not had the effect of transferring 'sovereignty-as-title' to international entities or altering the juridical status of territories subject to administration (p 108–109, 189). Instead, the effect of territorial administration on existing States and State territories since 1920 has been to affirm the existing status of the territories under administration, while diminishing sovereignty as control (p 145). The false perception that the exercize of administrative control involves a change in status or title to territory 'has led to the true nature of the relationship between international territorial title and the legal status of the territory concerned being obscured' (p 189). Yet Wilde does not explore any further the 'true nature' of the legal status or the forms of political organization created by territorial administration.

2. *The turn to function*

Instead, Wilde seeks to define the field by reference to the activity or function carried out in the conduct of international territorial administration. Wilde argues that it is necessary to comprehend the functions or purposes of international territorial administration before it is possible to 'appraise the technical problems faced by the projects' or to 'assess normative issues such

[6] For the long history of the claim that control over and title to territory should be treated as inseparable, see A Orford, 'Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect' (2009) 30 Michigan Journal of International Law 981.

[7] E Lauterpacht, 'The Contemporary Practice of the United Kingdom in the Field of International Law—Survey and Comment' (1956) 5 ICLQ 405, 410.

[8] ibid.

[9] ibid.

[10] ibid.

[11] ibid.

as accountability' (p 9). As this initial formulation suggests, Wilde chooses to suspend questions about the law and practice of administration until he has determined the functions or purposes of administration. Wilde positions his project as a work of 'international relations' (p 19). Law is specifically bracketed as involving a set of second order normative questions, or as giving rise to a set of issues that will be dealt with in passing. Thus the study 'does not encompass many of the complex legal issues raised by the activity' (p 45), such as issues of 'authority . . . responsibility, applicable law, jurisdiction, and, more generally, accountability' (p 45). Most legal issues, while they may be of importance to practice, can only be discussed 'once the policy objectives of the projects have been established' (p 46). Law will not help to make sense of the nature of those projects or provide a method for determining their policy objectives. Normative appraisal will only be possible once the role and history of international territorial administration have been established (p 459). Wilde represents the process of assembling the 'main factual features' of international territorial projects as 'largely descriptive' (p 47). The effect of Wilde's decision to postpone his engagement with the law and practice of administration until the final pages of his book is that this description remains at a very abstract and general level.

Nonetheless, Wilde's account offers valuable insights into the nature of international territorial administration. In particular, Wilde reveals two key features of the 'institution' of administration. First, Wilde shows that international territorial administration is premised upon a separation of governors and governed. For Wilde, this separation operates in terms of identity. Administrators are 'international' actors—either officials working for international organizations or foreign experts whose appointment process involved an international actor (p 25–27). These are actors whose 'identity' is 'alien' (p 27). For Wilde, the distinctive characteristic of international territorial administration is thus that the 'spatial identity' of the administrators as 'international' is 'distinct from, and opposed to, the "local" identity of the territorial unit and the population affected' (p 27). In this sense, Wilde argues that international territorial administration is merely a new form of trusteeship.

Second, Wilde suggests that international territorial administration is a technique that substitutes international entities for '"local" actors in the activity of territorial administration' (p 192) in order to deal with two types of problems. The first set of problems are what Wilde describes as 'sovereignty problems' or disputes concerning 'the identity of those actors exercising territorial control' (p 44). In such situations, international territorial administration has been used to provide some form of temporary 'neutral' administration pending the resolution of the wider dispute (p 203). International territorial administration is also a response to a second type of 'governance problem' concerning 'the *conduct* of territorial administration by local actors' (p 192) or the 'quality of governance exercised by those actors in the territory' (p 44). International administration has been seen as a means of promoting goals such as good governance, democracy, the rule of law, capitalism, multi-ethnic culture, the return of displaced people and the exploitation of natural resources.

Wilde argues that international territorial administration has become a preferred form of international governance precisely because it is more 'intrusive' than other international mechanisms of assistance or advice (p 44). Other mechanisms assume that the role of international organizations is to police the activities of State officials and influence their practices. They 'depend on the state itself to act' (p 279) and seek 'to monitor and influence state behaviour' (p 280). International territorial administration in contrast works by 'actually taking over the machinery of government so as to perform such action directly' (p 286). It does not depend on the State to act but instead takes over the operations of the State (p 280). Putting pressure on a government to take action always contains 'an element of uncertainty' (p 286) as 'governments may choose, even in the face of considerable hardship, not to give in to pressure' (p 286). For Wilde, international territorial administration removes that 'element of doubt' (286). As a result, 'its use makes policy implementation a given, not a highly probable outcome' (p 286). Wilde's focus upon international territorial administration as alien rule rather than a particular form of rule, however, means that he gives no further clues as to how international administrators have been able to ensure that their

policies are implemented without opposition. The substitution of 'international' for 'local' actors in contemporary practice does not seem to provide sufficient explanation for the ability of international administrators to remove the 'element of doubt' from politics—as with earlier forms of colonialism, it seems likely that it is the form of international rule that makes this possible. After all, earlier forms of colonialism were not resisted simply because they involved alien rule, but also because they involved a particular form of rule that was exploitative, destructive and authoritarian.[12]

Throughout his book, Wilde stresses the similarity between international territorial administration and earlier forms of trusteeship, including protectorates, colonial administrations, the Mandate and Trusteeship systems and occupation (p 298). The link between these practices is that they involve 'alien actors exercising administrative control ostensibly on behalf of the people of territories' (p 344, 356–357, 363). The administering actor and the administered people are understood to be distinct and separate (p 311–312). Wilde also reveals the commonalities in the techniques used across these various forms of trusteeship, including population transfer (p 359), a colonial model of law reform in which 'local laws were altered if they were incompatible with the "standard of civilization"' (p 359) and the restructuring of economies so as to ensure their integration within a larger economic system (p 329). Wilde rightly argues that this similarity is not the end of the story. It remains necessary to determine what flows, politically and normatively, from that similarity. Yet Wilde's suspension of an engagement with law and practice means that after 450 pages of text, complete with lists of a remarkable number of documents in very lengthy footnotes, the reader still has no real feel for the contemporary situation of international territorial administration or any basis upon which to respond to Wilde's argument that it is analogous to colonialism.

To take one example, Wilde asks whether international territorial administration is 'part of the solution, or part of the problem, of global inequality?' (p 444). Yet by postponing an analysis of legal practice throughout this book, he leaves the reader with little material with which to address this question. Colonialism coercively created an 'imperial commercial system' in which the 'character of [unequal] development' was determined in the metropolis through the imposition of a 'formal framework for economic activity'.[13] Wilde gives us no detail of practice or law with which to explore whether and how inequality is reproduced through similar forms of coercion today. In the contemporary global economy, inequality is not produced through the kinds of overt relations of domination that existed 'when feudal lords exercised their own force against their peasants, or when old imperial States set out explicitly to conquer territory, establish colonies and impose their rule on subject peoples.'[14] Instead, force—including the force of law—operates 'more indirectly, by sustaining the system of economic compulsions, the system of property (and propertylessness) and the operation of markets.'[15] The relation between the forms of compulsion that operate through the market (particularly the threat of unemployment) and the direct force of the State is 'opaque'.[16] Legal scholarship has a key part to play in testifying

[12] For discussion of the tradition of Indian resistance to British colonial administration as 'unBritish rule' see M Mukherjee, 'Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings' (2005) 23 Law and History Review 589, 595. Mukherjee points to the influence of texts such as D Naoroji's *Poverty and Un-British Rule in India* (S Sonnenschein, London, 1901) which argued that the 'economic and administrative policies of the British government in nineteenth-century India' had drained wealth from the colony to the metropolis and led to 'widespread poverty in the subcontinent'. The point was not that the government was alien or British but that in fact it *wasn't* British, that is, it didn't apply the principles applied in the metropolis to government of the colony.

[13] P Burroughs, 'David Fieldhouse and the Business of Empire' (1998) 26 Journal of Imperial and Commonwealth History 6, 12.

[14] E Meiksins Wood, *Empire of Capital* (Verso, London, 2003) 5.

[15] ibid 4.

[16] ibid.

to the character of that form of rule.[17] It can only do so, however, if scholars reject established divisions between public and private law, or between theory and practice, and include in their analyses of 'trusteeship' the technical activities of international arbitrators, the International Monetary Fund and the World Bank, development agencies, multinational corporations, international investment law, laws regulating the movement of peoples and laws relating to the privatization of property.[18] In other words, it may be possible to comprehend the legacies of an imperial political economy in contemporary international territorial administration, but this would require detailed engagement with the legal and political techniques of administrative rule.

More importantly, Wilde's decision to suspend questions about law while involved in the process of 'description' means that the person describing the situation and deciding what is to be done is represented as somehow outside the law. For example, in his concluding chapter Wilde notes that the exercize of trusteeship conflicts with the 'articulation of self-determination that formed the basis for decolonization, denoting freedom from external control' (p 444). If international territorial administration is to be justified, it 'must be able to resist the fundamental critique of trusteeship itself', that is, 'that exercising control over people from outside is inherently unjust' (p 444). For Wilde, this raises the dilemma of 'how a choice should be made' between what William Bain describes as the 'good of assisting persons in need and the good of respecting human autonomy' (p 444).[19] Wilde suggests that having identified international territorial administration as part of a family of policy institutions concerned with international trusteeship, 'one way of appraising the legitimacy of ITA is to compare its operation with colonialism, and to seek to learn lessons for its operation from the practice of colonial trusteeship' (p 443). Although the history of colonial administration may be 'unpalatable', it did develop techniques for administering distant places and populations (p 443). Wilde concludes that the UN may have lessons to learn from this experience if it is to become an effective international administrator. If, in contrast, international administration sets up its 'beneficiaries to fail as independently viable, prosperous, and just societies' (p 454), then it will be hard to argue that the violation of self-determination is justified. The legitimacy of the projects will be 'fundamentally compromised if the projects do not operate effectively' (p 455). The creation of 'accountability mechanisms' can serve to increase legitimacy and help to ensure that projects are well managed (p 452). Wilde's concluding reflections on the way in which administration might be made more effective feed back into a 'search for technical answers' and for solutions that can be 'appraised', thus supporting the authority of those with the expertise to offer technical, measurable projects as solutions to 'crises'.[20] The idea that the international community must choose between helping 'persons in

[17] For the suggestion that '[e]xamining law as a particular codification of social relations that provides an abstract framework for the exercize of power means that law can testify on the latter's character', see C Boukalas, 'Counterterrorism legislation and the US state form: Authoritarian statism, phase 3' (2008) 151 Radical Philosophy 31, 38.

[18] For analyses of the imperialist legacies of international economic ordering that attempt to move between public and private international laws and bodies, see A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, Cambridge, 2004); A Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press, Cambridge, 2003); AA Shalakany 'Arbitration and the Third World: A Plea for Reassessing Bias Under the Specter of Neoliberalism' (2000) 41 Harvard International Law Journal 419.

[19] W Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (Oxford University Press, Oxford, 2003) 2.

[20] For a discussion of the way in which critical writing on humanitarian internationalism can have this effect, see Jenny Edkins, *Whose Hunger? Concepts of Famine, Practices of Aid* (University of Minnesota Press, Minneapolis and London, 2000) xvi–xvii, 159.

need' or respecting their autonomy reproduces those 'persons' as objects of knowledge and of action. The international policy-maker is positioned as the subject of that knowledge and that action, and as not bound by the law when deciding whether and how to help 'persons in need'. Instead, the legal right to self-determination becomes one of the factors to be weighed in deciding how administration might serve international policies in the future (p 38, 454), rather than a constraint that binds those who make such decisions in the present. In this way, Wilde's critique of the effectiveness of humanitarian internationalism both serves to reinforce the international community's 'moral ownership' of civil war, famine and other crises in the decolonized world,[21] and to recreate the image of the international official as a decision-maker who is beyond the law.

B. Carsten Stahn: Managerial Means to Cosmopolitan Ends

1. The law and practice of administration

Unlike Wilde, Carsten Stahn immerses the reader in a detailed account of the law and practice of international territorial administration. His discussion of the history of this practice provides a rich source of material relating to the involvement of the League of Nations, and more particularly the UN, in administration. As Stahn shows, the fact that the UN Charter does not explicitly mention international territorial administration has not been treated as a constraint on UN involvement in this activity—'the UN and its members have never interpreted the Charter so narrowly, searching for a specific authorization for each new activity'.[22] Instead, the approach has been to ask whether territorial administration is necessary to the performance of the function of maintaining international peace and security entrusted to the UN and not explicitly prohibited in the Charter.[23] Early in the history of the organization, the ICJ endorsed such an approach, holding that the UN 'must be deemed to have those powers, which, though not expressly provided in the Charter, are conferred on it by necessary implication as being essential to the performance of its duties'.[24] As the conception of 'peace and security' gradually expanded, so too did the range of actions that were justified as necessary for maintaining peace and security.[25] Stahn explores in detail the innovative and expansive practices of administration that have developed alongside UN peacekeeping since 1945. His case studies reveal how important international territorial administration has been to the management of decolonization, and conversely, how important decolonization has been to shaping interpretations of the purposes of the UN. In each case of territorial administration, Stahn presents the UN as neutral, impartial and engaged in tasks that are somehow not political—a mediator between 'factions' (an expansive term that can encompass elected governments, insurgents, revolutionaries and genocidaires) unable to reach consensus. From his discussion of the UN's controversial involvement in the Congo onwards, Stahn treats all sides in these conflicts 'as equally culpable' (as does the UN) and regards 'the absence of hostility

[21] A de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (African Rights & The International African Institute, London, 1997) xvi.

[22] SR Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War* (St Martin's Press, New York, 1995) 30.

[23] ibid.

[24] ICJ, *Reparations for injuries suffered in the service of the United Nations* (Advisory Opinion) ICJ Rep 1949, 174, 182.

[25] See further ICJ, *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)* (Advisory Opinion) ICJ Rep 1962, 151, 168: 'Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action. But when the Organization take action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not ultra vires the Organization'.

as unproblematically desirable'.[26] The effect of this practice of intervention and administration has been to create a long-term policing and 'managerial' role for the UN in the decolonized world (p 435). International administration has functioned 'to manage the realisation of claims of decolonisation and self-determination' and 'to restore authority in a governance vacuum' (p 734).

Stahn also provides an extremely detailed account of the current law and practice of international territorial administration, from which emerges a picture of administration as a form of executive and military rule. Like older forms of indirect colonial rule, international administrations have been structured around two systems of laws—executive decrees and regulations passed by administrators and local laws. For example, UNMIK, UNTAET and the CPA all introduced 'a new legal order' with a new 'hierarchy of norms in the territory under international administration' (p 664). Administrative regulations or directives were declared to prevail over laws in force prior to the administration. The scope and character of the resulting executive rule is illustrated by Stahn's discussion of the regulatory authority exercized by international officials in the areas of property disputes, detention and judicial independence. International administrators have removed jurisdiction over many property disputes from local courts and entrusted it to internationalized property commissions. In Bosnia and Herzegovina, for example, the Commission on Real Property Claims of Refugees and Displaced Persons was given jurisdiction over 'any claims for real property . . . where the property has not voluntarily been sold or otherwise transferred since April 1, 1992' and a mandate 'not [to] recognize as valid any illegal property transaction, including any transfer that was made under duress . . . or that was otherwise in connection with ethnic cleansing' (p 681–682). The Iraqi Property Claims Commission had jurisdiction to 'resolve claims concerning the unlawful confiscation, seizure or expropriation of real property by the former governments of Iraq between 19 July 1968 and 9 April 2003' (p 683). Those international commissions dealt with fundamental questions concerning the validity of acts recognized as legal by the former regime. The process facilitated the return of many refugees and was far more expeditious than traditional legal proceedings, but it was also autocratic, inflexible and conducted within short timeframes designed to suit the interests of donor funding programmes (p 684). Moreover, it led to regular conflicts of jurisdiction with domestic courts. UNMIK purported to resolve such conflicts by issuing 'instructions to domestic courts' telling them not to interfere with cases concerning property issues until they had been dealt with or rejected by the UN system but, Stahn notes, 'this instruction did not solve the problem' (p 686). In Bosnia and Herzegovina, the property commission did not have enforcement powers and had to rely on uncooperative domestic authorities to enforce its rulings (p 687). Administrators attempted to address this through 'the removal from office of public officials who refused to implement property legislation or otherwise blocked minority returns' (p 687).

Administrations have increasingly engaged in the executive detention of those considered to pose a threat to public peace and order. For example, UNOSOM II officials in Somalia decided that suspects could be detained 'when the public authorities [had] reasonable grounds to believe that the detainee represents a threat to public order' (p 692). UNMIK authorized the temporary detention, or restriction on the freedom of movement, of individuals who pose a 'threat to public peace and order', including those who pose a threat to 'a safe and secure environment' or to 'public safety and order' (p 693). UNMIK explained its use of executive detentions for security reasons in the following terms:

> The situation in Kosovo is analogous to emergency situations envisioned in the human rights conventions. We emphasis that UNMIK's mandate was adopted under Chapter VII, which means that the situation calls for extraordinary means and force can be used to

[26] For a critique of these tendencies in the broader field of humanitarian internationalism, see Edkins (n 20) xvii.

> carry out the mandate. Any deprivation of liberty by an Executive Order is temporary and extraordinary, and its objective is the effective and impartial administration of justice (p 507).

In Iraq, the CPA put in place different practices for 'criminal detainees' and 'security detainees'. Criminal detainees were held in facilities controlled by the Iraqi Ministry of Justice and their detention reviewed within 24 hours of arrest by a judge. Security detainees were held by Coalition forces, only entitled to review by a military lawyer and could be detained indefinitely (p 698). Relatives, friends and the International Committee of the Red Cross were all given limited access to security detainees (p 700).[27]

Under international territorial administration, judicial independence has routinely been subordinated to executive rule. To take one example, UNMIK closely controlled 'the appointment and removal of judges and prosecutors from office' (p 702). Judges were appointed as UNMIK employees for short terms and UNMIK retained a wide margin of appreciation regarding the decision to dismiss a judge or prosecutor. The Special Representative of the Secretary-General also had the power to allocate judges to particular cases (rather than doing so through a random system). UNMIK rejected criticisms of its practice, stating:

> Administrative independence and security of tenure are essential for the justice system which UNMIK must build for Kosovo's future, but the [international judges and prosecutors] are not part of that future. They are a special force for intervention to enable UNMIK to administer impartial justice at this early phase, when the local judiciary is too weak to be able to withstand the societal pressures on it in the aftermath of the conflict. Their appointment and deployment is therefore highly tactical, and must be under the United Nations' direct control (p 703).

Stahn shows that international actors exercize these expansive executive powers while enjoying wide-ranging privileges and immunities. The UN as a legal person has absolute immunity under the UN Convention on Privileges and Immunities of 13 February 1946 (the General Convention), and UN officials are granted immunity 'in respect of words spoken or written and all acts performed by them in their official capacity' (p 582). The head of the mission and other senior officials enjoy diplomatic privileges and immunities in addition to their functional immunity (p 582). Military personnel generally enjoy criminal immunity and functional immunity under Status of Forces Agreements negotiated between the UN and the host State (p 584). In addition, the international administrations themselves have passed regulations granting expansive immunity and privileges to personnel. Stahn argues that the practice of granting broad-ranging privileges and immunities to international actors was designed to protect the UN and peacekeepers from 'interference by the government of the territory in which they operate' (p 581) and is not appropriate when the UN and peacekeepers have effectively become the government (p 591).

2. *The 'executive function of the international community'*

It is in the movement between his analysis of the practice of administration and its legal conceptualization that Stahn's book is particularly illuminating. Reading the details of the legal practice of administration described above, I was struck by the gap between the techniques of government available to local rulers of decolonized States and the techniques of government available to the UN administering the same States. This raised the question for me of how that gap

[27] For the argument that ongoing limitations on contact with detainees facilitated torture or ill-treatment of detainees by US and UK forces and by Iraqi authorities, see Amnesty International, *Beyond Abu Ghraib: detention and torture in Iraq*, March 2006, available at http://www.amnesty.org/en/library/info/MDE14/001/2006.

should be understood. For Stahn, the practice of engaging in executive rule of the decolonized world is the implementation of a programme understood in terms of managerial means and cosmopolitan ends. Stahn sees international administration as a welcome result of the growing managerialism of contemporary international law. International law used to be directed towards dispute settlement and negotiation between States, but this tradition of international law could not 'provide a conclusive answer to the needs of a progressively international society' (p 34). As a result, priority has more recently been given to 'the regulatory function of international law' (p 34). International law now exists to achieve 'other systemic objectives' and 'to vindicate community interests' (p 34). Stahn argues that international territorial administration reflects this 'transformation of international law' (p 35). International territorial administration is 'driven by the aim of managerial problem-solving' and functions as 'an instrument to secure collective and individual rights' (p 35). It can be understood as part of a broader development of the 'executive function of the international community' (p 29) and the move towards 'a more centralized conception of governance' at the 'universal level' (p 30). International administration is now a technique for enforcing international legal obligations and 'a means to implement international legal standards and further commonly defined community interests' (p 154). Stahn argues that under international law, the State 'has positive obligations to secure the welfare of its citizens and to maintain law and order by virtue of its governance mandate' (p 31). The State is 'only one contender among others' to fulfil these 'functions' (p 33). If it fails to do so, they are readily transferable, for example to the 'international community' (p 33). Stahn suggests that this vision of international administration 'embraces a functionalist understanding of sovereignty' (p 33).

This account of international law as a system raises significant constitutional questions, such as who has authority to determine whether a State is acting 'to secure the welfare of its citizens', from whom the State receives 'its governance mandate and how 'community interests' are 'defined'. Stahn is not, however, concerned with such constitutional questions, because he considers that an expanded 'executive function of the international community' is genuinely in the common interest. While Stahn does not address the constitutional issues raised by administration in detail, he does propose reforms aimed at improving the 'future management of international administration' (p 733). Stahn's proposals focus upon ensuring greater 'accountability' of administrators, such as through 'intra-institutional reporting' between parts of the UN system or informal mechanisms of independent external scrutiny that would leave administrators free from 'directly binding legal sanctions'. According to Stahn, such informal methods of accountability accord 'very well with the cooperation-based nature of international relations' (p 622) and offer 'more pragmatic' solutions than formal proposals such as extending the jurisdiction of existing human rights treaty bodies to include international organizations (p 620).

A good illustration of Stahn's approach to the constitutional questions posed by the practice of administration is his discussion of the 'management' of transition. Stahn comments that in general, international territorial administrators must resist 'political pressure from domestic leaders' and 'prevailing public opinion' while exercising authority 'for the benefit of the inhabitants of the administered territory' (p 717). The resulting tension between these goals increases the longer the mission progresses. Even though he recognizes the growing sense that rule has to be 'for the people' and that there is a 'need to strengthen "local ownership"', Stahn cautions that the 'management of gradual (self)-empowerment of domestic actors is a delicate task' (p 719). Empowerment must take place in a staged process. The first step is consultation, understood as a 'technique to balance domestic ownership against international control' (p 720). Domestic authority can gradually be restored, but it should begin at the municipal level and only gradually move to the level of the State. In some situations, it may be necessary to limit the involvement of political parties who are seen to be too powerful or resistant to international policy implementation. In East Timor, for example, the UN passed a regulation decreeing that elections to the newly created Constituent Assembly would be conducted on the basis of proportional representation, 'a choice made in order to reduce the influence of the major party (FRETILIN)'

(p 709).[28] Elections should not be held without 'follow-up strategies' (p 726), because 'elections do not *per se* suffice to manage successful transitions' (p 726). In Cambodia, for instance, '[s]ome of the very laws and regulations that had been enacted by the UN administration were reversed' (p 728). 'It must be sufficiently clear at the outset of the mission what shall follow after the elections' (p 729). If not, the post-administration period could see 'a return to previous customs and power configurations'. The goal is for the ends of the administrators to become the ends of the local people as well. If not, 'local actors' may 'lose the willingness to implement standards' and perhaps even 'fail to develop a sense of responsibility for the management of "their" affairs' (p 730).

The undemocratic nature of international territorial administration is not of great concern to Stahn, perhaps because the consent of States or peoples to temporary authority seems less relevant when their situation is understood as part of a broader movement towards a new cosmopolitan order. Stahn comprehends international territorial administration as part of a 'cosmopolitan' tradition aimed at 'overcoming the limitations of states as organs of global democracy' (p 40). For Stahn, 'territorial administration conforms with the cosmopolitan concept of the promotion and enforcement of a World Law ('*Weltinnenrecht*'), constituted by an objective order of norms which applies to state and non-state actors alike and thus forms the underpinning of a global community' (p 40). The authority and unity of the State is challenged by 'rethinking public rule from the angle of private actor interests' (p 40). Yet, as Stahn shows, while cosmopolitanism may challenge the authority and unity of particular States, the claim to be representing 'private actor interests' strengthens the worldly authority of international administrators. According to Stahn, the 'authority assumed by international administrators is exercized by representatives of the international community for the benefit of the population of the administered territory' (p 40). International authority in the decolonized world is addressed to achieving 'certain communitarian goals' that concern 'the international community as a whole' (p 758).[29]

Stahn's endorsement of international territorial administration as a means of achieving cosmopolitan ends explains his systematic lack of concern with what he variously calls local ownership, sovereign equality or self-determination. For example, Stahn comments that self-determination is an 'express limitation on the exercise of governmental powers' and that it is 'beyond doubt that standards of self-determination apply to UN transitional administrations' (p 459). However, the scope of the right to self-determination must 'be interpreted in light of the special circumstances in territories in transition', in particular, 'the security environment and

[28] The reasons for the UN's attempt to reduce the influence of FRETILIN are unclear. FRETILIN (Frente Revolucionária do Timor-Leste Independente or Revolutionary Front for an Independent East Timor) was the most popular of the groups contesting power during the preparations for Timorese independence in 1974. On 28 November 1975, in the context of repeated cross-border attacks by Indonesian special forces seeking to provoke civil war and thus provide an alibi for intervention, FRETILIN declared Timor's independence. A little over a week later, on 7 December 1975, Indonesia launched a general invasion of Timor, carried out with the knowledge and tacit support of the US, UK and Australian governments. This support was motivated by issues of regional security, concern that an independent Timor might align itself with China and, in the case of Australia, the desire to secure access to Timor Sea oil and gas. In the democratic elections for the Constituent Assembly held in 2001, FRETILIN won 57 per cent of the vote, and its Secretary-General Mari Alkatiri became Chief Minister. On 20 May 2002, Timor-Leste formally gained its independence and Alkatiri became Prime Minister of the new State. Alkatiri was unpopular with the Australian government and was forced from office during the crisis of 2006. See further A Orford, 'What Can We Do to Stop People Harming Others? Humanitarian Intervention in Timor-Leste (East Timor)' in J Edkins and M Zehfuss (eds), *Global Politics: A New Introduction* (Routledge, London and New York, 2009) 427.

[29] For the genealogy of this conception of governance of the Third World as a means of achieving goals that concern 'the international community as a whole' see JL Beard, *The Political Economy of Desire: International Law, Development and the Nation State* (Cavendish-Routledge, London, 2006).

general state of the political system' (p 462). The 'temporary suspension of participatory rights' may be necessary to allow for 'stable and representative self-government' to develop (p 462). Self-determination becomes one more factor to be weighed in the managerial calculation about how best to achieve particular (cosmopolitan) ends:

> Participatory self-determination is therefore not a fixed-term parameter, but a variable concept whose scope of application must be assessed in light of the circumstances of the specific situation (p 463).

In the words of UNMIK: 'Human rights principles should not be viewed as operating to dogmatically bar action that must be taken to address urgent security issues' (p 507). Stahn's analysis of practice thus reveals that administration as a form of rule is undemocratic and illiberal. That lack of democracy is understood to be necessary because of the nature of the political situation in administered territories. Parliamentary participation or democratic elections may hamper the revolutionary creation of a new political form that can represent the general welfare or universal values of the collective. Yet without any practice through which all the inhabitants of administered territories can participate in shaping the new order, it is hard to see how we could know if people are, in their own view, materially better off or more secure as a result of administration, or if the Security Council can really be said to have acted on their behalf.[30]

C. Gregory Fox: Humanitarian Occupation as Revolution

1. From interests to values

Gregory Fox reinforces the sense that international territorial administration is a revolutionary phenomenon. For Fox, the administrations conducted in Bosnia Herzegovina, Eastern Slavonia, Kosovo and East Timor are best understood as 'humanitarian occupation': 'the assumption of governing authority' by an international actor for the humanitarian purposes of ending human rights abuses, creating liberal democracy and restoring peace (p 3). In contrast to Wilde and Stahn, Fox considers that humanitarian occupation does not represent 'continuity with past practice, but a crucially important deviation' (p 17). While the internationalization of territory from the 19th century to the creation of the UN trusteeship system was designed to serve the strategic interests of great powers, humanitarian occupation is driven by a values-based commitment to protecting the welfare of inhabitants and fostering democratic self-government. When the 'international community assumed supreme executive and legislative authority' in Bosnia Herzegovina, Eastern Slavonia, Kosovo and East Timor, it entered 'unfamiliar territory' (p 72, p 110). The 'international community' had not only begun to dictate 'the terms of the social contract' but had also become 'its guarantor' (p 72). Through humanitarian occupation, the international community sought 'to remake the occupied state' (p 305). 'The enormity of these tasks should command our attention to the occupations as pivotal normative events' (p 305).

Fox's approach is representative of a broader tendency to characterize the ending of the Cold War as the beginning of an era in which 'power is no longer projected as an act of territorial hegemony but as a global, ethical or values-led act'.[31] It is not clear, however, why official representations of values as the basis for action can now be taken as a reliable guide to the 'real'

[30] For a strong critique of an approach to international security that assumes 'we know (or can reliably ascertain) those social conditions in which security flourishes', that everybody would agree on what those conditions are and that everyone would agree that achieving security is always more important than anything else see M Koskenniemi, 'The Police in the Temple. Order, Justice and the UN: A Dialectical View' (1995) 6 EJIL 1, 19.

[31] D Chandler, *Hollow Hegemony: Rethinking Global Politics, Power and Resistance* (Pluto Press, London, 2009) 186 (critiquing the representation of foreign policy as an expression of values).

motivations of States. Where once the projection of force by the Great Powers was treated as the expression of national interests, today we are told that it is an expression of universal values. Yet how is it possible to determine the 'real' intentions of States in a particular situation, or to differentiate between interests and values as motivations for action? Fox argues, for example, that there is a clear difference between the motivations for internationalization in earlier cases and those for contemporary humanitarian occupations. (p 19). Earlier cases of international administration, such as those conducted under the Mandates system, had no 'normative groundings' but instead simply expressed the 'strategic concerns of the dominant states'. In contrast, Fox interprets recent instances of internationalization as an expression of liberal values and international norms. Yet Fox does not explain how he knows what States *really* intended in supporting the establishment of the Mandate system then, or in supporting the establishment of humanitarian missions in Kosovo or East Timor now. After all, the Mandate system was certainly *represented* as the principled conduct of a 'sacred trust' directed to achieving 'the well-being and development' of the peoples of the territories under administration,[32] although there is a great deal of archival material that could support the claim that strategic interests lay behind this practice.[33] Without some account of the relation of official speech to the practice of States and the development of the law, it is not clear which official statements can be relied upon as representative of the real reasons for action.[34] In addition, it is hard to draw a bright line between an interest and a value. For example, when Sir Geoffrey Butler described the Mandate system as a form of 'constabulary work' aimed at 'suppressing disorder in the remoter parts of Europe, Africa and Asia', was he expressing a value or an interest?[35]

This matters because the claim that humanitarian occupations are an expression of collective values is central to Fox's argument about the appropriate legal response to these actions. For Fox, the strongest legal foundation for this expansive practice of intervention and administration derives from the role of the Security Council in maintaining international peace and security and more generally in guaranteeing universally agreed norms. Fox points out that although 'target states formally consented to the humanitarian occupation missions' (p 177), there was something particularly artificial about that 'consent'. As Fox shows, in the four cases he characterizes as humanitarian occupation, the relevant authorities only consented to the occupation after being subjected to 'intense international pressure, including the threat or use of military force' (p 110–111, p 177–179). In the cases of both Bosnia-Herzegovina and Kosovo, key leaders were also indicted for war crimes before the negotiations authorising the occupation missions (p 77, 111). The stronger legal justification for those missions is therefore authorization by a Security Council resolution under Chapter VII, either as the only legal basis for occupation in cases where a State has refused to consent or as a way to 'rescue' agreements that had been coerced (p 200).

[32] Covenant of the League of Nations, art 22.

[33] See W Roger Louis, *Ends of British Imperialism: The Scramble for Empire, Suez and Decolonization* (I B Tauris, London, 2006) 205–213 (discussing statements in the Minutes of the Imperial War Cabinet and Eastern Committee of December 1918, suggesting that the British government had many official reasons for deciding to support the Mandate system—the desire to gain American support for British colonial affairs, the concern that imperial contests for territory in Africa, Asia and the Middle East were a serious threat to peace, the recognition that self-determination was a legitimate claim of peoples in Europe and the Middle East and the belief that self-determination had no application to the 'undeveloped and unorganised' peoples of the Pacific, Africa and Asia.).

[34] For an attempt to develop such an account see A Carty, 'Distance and Contemporaneity in Exploring the Practice of States: The British Archives in Relation to the 1957 Oman and Muscan Incident' (2005) 9 Singapore Year Book of International Law 1, 3 (suggesting that without access to the 'full picture', involving both verbal positions taken by organs of States as well as knowledge of what the State has actually done, 'the actions of a State, such as the UK, may be unintelligible').

[35] Sir G Butler, 'Sovereignty and the League of Nations' (1920–1921) British Yearbook of International Law 35, 40.

The question then is whether authorizing such occupations is beyond the limits of the Council's jurisdiction (p 201).

2. Law and revolution

Like other commentators, Fox thinks that the UN Charter provides no substantive limitations to Security Council jurisdiction and can see no utility in 'legal scholarship that urges normativity upon an essentially alegal body' (p 205). Nor does he think that the Council should be bound by forms of law designed to constrain the actions of States, such as the law of occupation, principles of sovereign equality or *jus cogens* norms. According to Fox, the modern international legal system was 'conceived to govern a community of States acting unilaterally and often in mutual hostility' (p 274). Laws such as those developed to protect sovereign equality and territorial integrity against State aggression should not be directed against the Security Council, given its 'collective identity' and its 'unique authority' as the guarantor of international peace and security (289). It is, however, somewhat misleading to argue that principles such as sovereign equality or non-interference in the internal affairs of States emerged merely as a constraint on State aggression. From the 16th century onwards, the concept of sovereignty was developed and used as much against the expansive jurisdictional claims made by those purporting to represent the universal as against the claims of other States. Like earlier claimants to universal jurisdiction such as the Pope and the Holy Roman Emperor, the Security Council now claims both the power to determine the legitimacy of governments and the power to state what is lawful for the world as a whole.[36]

Having suggested that existing international law is a 'state-centric' system that is 'ill-suited to regulating actions of the Security Council', and that the UN Charter offers no constraints on Council action, Fox is left with the image of a Council unbound (p 288). Indeed, Fox considers that the Council has in recent times begun to act 'legislatively' and 'has effectively changed the governing law' (p 288). By authorising humanitarian occupation, the Council has imposed new obligations on States and 'given rise to a new model of enforcement action that transcends existing legal categories' (p 288). In so doing, the Council has substituted its legislation for the process of State consent to 'the constraints of new international rules' (p 291). In a sense, this is the realization of a way of thinking about the relation between the State and international authority that begins for Fox with the Mandates system. According to Fox, the Mandates system provides 'indirect lessons about the *functions* served by international governance' (p 32). Fox argues that the key legal debate at that time was about 'where to locate "sovereignty"' in the Mandates system (p 28). Fox is dismissive of this 'now dated sovereignty question' (p 32). He quotes with approval Judge Arnold McNair's comment in the *South-West Africa* case of 1950 that the mandates were 'a new institution—a new relation between territory and its inhabitants on the one hand and the government which represents them internationally on the other' and that the mandates were 'a new species of international government, which does not fit into the old conception of sovereignty and is alien to it'.[37] According to Fox, McNair offers 'a welcome diversion from the tyranny of categories' (p 33). 'McNair's functionalism' instead 'returns us to the question of precisely which functions of government were vested in the League' (p 33). 'Legal authority over mandate and trust territories had been disaggregated, requiring an understanding of political power that was diverse and multifaceted' (p 33).

In this vision, the State is just one of many actors that might exercize an authority that has now been 'disaggregated' (p 33). The development of a normative framework for Council action must take into account the broad 'functions of government' which it has now been allocated: international law must 'define the scope' of the Council's powers by reference to its 'plenary authority

[36] See further Orford (n 6).

[37] ICJ, *International status of South-West Africa* (Advisory Opinion) ICJ Rep 1950, 128, 150 (separate opinion of Sir Arnold McNair).

to legitimate the use of force' and 'the purposes for which that plenary authority was granted' (p 289). Fox does not, however, want this to be taken as 'an argument that the Council exists above the law' (p 289). Instead, it is 'a creature of international law and is necessarily situated within it' (p 289). For Fox, the Council is situated within law, not in the sense that it is subject to legal constraints, but because of its '*normative environment*' (p 295). Fox argues that when States engage in a norm-rich deliberative process, they come to recognize the power of norms and so there is less need for a normative check on their own power (p 296). Fox suggests that this kind of 'process-based legitimacy' shapes decisions taken by the Security Council, because 'the normative and cooperative ethos that lies at the heart of the Council's mission' influences 'how participants understand their proper relation to each other' (p 298). Yet Fox's argument glosses over the complete lack of any democratic character to the procedure and composition of the Council. That undemocratic quality made some sense when the Council was envisaged as the organ that maintained peace and security, as opposed to the General Assembly that debated broader questions of public good and justice.[38] Fox responds to the fact that the Council is by design incapable of functioning as a democratic body by suggesting that 'proposals for more openness' in Council procedures should be heeded (p 299).

Fox concludes that humanitarian occupation does not mean the marginalization of the State in international law, but rather the marginalization of 'the politically illiberal state' (p 305) and the adoption of 'liberal democracy as the preferred model of national governance' (p 154). Yet it is important to note the limits of this normative commitment to liberalism and democratic governance. It may be true that democratic politics is the only model now available to governments or elites within decolonized States. Democratic politics is not, however, the means used either by the Security Council or by 'humanitarian occupiers' to secure their political goals. While 'occupation missions effectively seek to operationalize the liberal model' (p 173), they do so only with respect to governance by State officials. Thus 'international law' may be 'coalescing around a liberal model of the state' (p 172), but it is not coalescing around a liberal model of governance more generally. The Security Council acts 'to constitute itself, in essence, as the guarantor of a pluralist political order' (p 97) and 'the ultimate law-giver' (p 116), in the sense that executive rulers have long constituted themselves as guarantors of the normal situation and thus outside the law. Fox's willingness to treat an expansive and unconstrained international authority as legitimate exemplifies a trend away from liberalism as the dominant mode of international legal thought. International law, like much modern secular law, oscillates between emphasising individual consent and the collective good as the foundations of its authority.[39] The international legal solution to the tension between individual freedom and worldly authority has classically been liberal—it depends upon preservation of a space within which autonomous subjects (here sovereign States) can freely choose to subject themselves to authority and bind themselves to the order that they bring into being.[40] Fox maintains some concern with the question of whether States can be said to have consented to the new legal order brought into being by the Security Council, but it is strikingly difficult for him to find a place for State consent within his account of contemporary international law. For Fox, the international community really does represent genuine universality, and individual States (and indeed individuals) obtain their freedom through their association as members of this international community. Fox does not oscillate between prioritising individual consent and prioritising collective interests. At every stage of his argument, Fox moves away from a concern with State consent towards subsuming the individual State into the collective interest. This is a revolutionary response to the relation between freedom and authority. In the words of Engels: 'A revolution is certainly the most authoritarian thing there is'.[41]

[38] Koskenniemi (n 30) 21.

[39] M Koskenniemi, *From Apology to Utopia* (2nd edn, Cambridge University Press, Cambridge, 2005).

[40] ibid 21.

[41] F Engels, 'On Authority' in Robert C Tucker (ed), *The Marx-Engels Reader* (2nd edn, WW Norton and Co, New York, 1978) 730, 733.

II. INTERNATIONAL ADMINISTRATION AS ADMINISTRATION

A. Rethinking Functionalism

Taken together, the three books under review offer a detailed account of the theory and practice of administration. They thus provide a rich source of material necessary to understanding how international territorial administration functions and how it is represented. Where these books are weaker is in their capacity to make this material intelligible and amenable to political action, and their sense of the role of the jurist in doing this. Because of the narrow role that they understand law to play in a functional world, these books offer no insight into the juridical form that is produced by this practice or what this form might mean. In their determination to abandon questions of status, these books do not seek to grasp the juridical form that is created through administration. The books describe a powerful institution or apparatus of administration that appears to operate without any corresponding *concept* of administration. In this sense it is not clear what the functions, and thus the responsibilities, of international territorial administrators really are. Perhaps the function of administration is simply to protect the life of the inhabitants of the territory through establishing order. And yet we can see from the description of the legal questions that arise in practice that international administrators do far more than this. They detain people, establish systems of judicial administration, redistribute property, set and collect taxes, nationalize industry, run schools, adjudicate disputes, allocate resource contracts, create central banks, provide services and so on. International officials undertake all these tasks while benefiting from an extremely broad regime of immunities and privileges developed to enable the conduct of international public service or diplomatic relations. They do all of this without a developed account of their political (as opposed to technical or humanitarian) practice, and without any international legal categories adequate to the tasks upon which they are engaged.

Wilde, Stahn and Fox do not seek to grasp the juridical form that is created through administration because they understand functionalism to mean abandoning an outdated obsession with form or status and instead attending to the allocation of disaggregated functions of government across a range of different actors.[42] The international order becomes comprehensible as a system in which 'functions' are vested in this or that social group or actor, in the way that a manager might vest a task in this or that organizational department. In the self-conscious move from formalism to functionalism, international lawyers are no longer concerned with 'status' or the 'rights of sovereigns' but with 'the welfare of populations'.[43] The State is dismissed as if it were simply one of the many social groups or 'other associations in which men live'.[44] Of course it is much more appealing to speak about the disaggregation of State functions than to cling to some outmoded conception of sovereignty or to assert that the principle of sovereign equality really shapes international relations. A functionalist account that emphasizes the complexity of global governance 'articulates a project of technological reason that seems, after all, so much more up to date than the Victorian antics of international law'.[45]

Yet earlier functionalists did not question the concept of sovereignty or the form of the State in order to deny the relevance of concepts or forms in general, but rather to deny the *adequacy* of

[42] For an account of international territorial administration that does explore the formal status of administered territories, see B Knoll, *The Legal Status of Territories Subject to Administration by International Organisations* (Cambridge University Press, Cambridge, 2008) (arguing that the status of such territories is defined by the fact that the 'international legal order reaches the objects of its concerns directly, through its organ, without the constraining mediation of a sovereign state structure', at 412).

[43] M Koskenniemi, 'Occupied Zone—"A Zone of Reasonableness"?' (2008) 41 Israel Law Review 13, 31–32.

[44] C Schmitt, 'Ethic of State and Pluralistic State' in C Mouffe (ed), *The Challenge of Carl Schmitt* (Verso, London, 1999) 196.

[45] M Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics' (2007) 70 Modern Law Review 1, 23.

inherited forms to the political situation they faced. Indeed, the political situation to which early functionalists were responding shares many features with the political situation facing international lawyers today. Harold Laski, for example, turned from asking what the State *is* to what the State *does* in an attempt to develop a theory of State responsibility that was adequate to the expansion of State functions. For Laski, writing in 1919, the need to hold the State responsible for the use of public money (held on 'trust') had become evident. This may not have been necessary 'in the days when the functions of government were negative rather than positive in character', [46] but by 1919 this was no longer the case. 'The modern state is . . . nothing so much as a great public-service corporation'.[47] English public law concepts had not developed sufficiently to 'meet the new facts they encounter', and thus English public law was not adequate to the task of developing a new theory of responsibility.[48] The linking of government with 'the trappings of medieval monarchy' had led to the centrality of 'the equation 'Sovereignty = privilege' which is central to English thought'.[49] Laski recognized that particular officials are always understood to gain their authority from some third term: 'that which gives the official his meaning . . . escapes the categories of law'.[50] In England, that term is 'the Crown; but if we choose to look beneath that noble ornament we shall see vast government offices full of human, and, therefore, fallible men'.[51] The functionalist challenge was then to rethink the 'antiquarian' conception of the State in public law so that 'the real machinery of government' could be 'substituted for the clumsy fiction of the Crown'.[52]

Other early functionalists like Felix Cohen also attacked legalism for its attachment to empty forms and metaphysical ideals. Cohen argued that it was necessary to move away from 'legal fictions' that present as 'concepts' and instead look to the '*motions* or *operations*' that they describe.[53] While 'it is useful to invent legal terms to describe the corporate activities of human beings', it is necessary to avoid falling into the trap of believing that those legal terms describe real things.[54] The State or the corporation are just useful fictions to describe collective behaviour, and must be abandoned if they cease to be useful. Cohen compares functionalism in law to 'functional architecture', which is 'likewise a repudiation of outworn symbols and functionless forms that have no meaning—hollow marble pillars that do not support, fake buttresses, and false fronts'.[55] It is worth noting that the goal of functionalism was to repudiate 'functionless forms' but not to repudiate form altogether—buildings still need pillars and fronts. Cohen called instead for the reinterpretation of legal form: 'the salvaging of whatever significance attaches' to existing concepts 'through the redefinition of these concepts as functions of actual experience'.[56] It was necessary to focus not on the properties of an object but rather on its operations, and to discover what a concept does or the way it is recognized in practice.[57] The challenge for legal scholars was to try to make legal form meaningful in light of experience and practice.

Wilde, Stahn and Fox all argue that the meaning of administration cannot be grasped through empty concepts. All three seek to attack legal fictions (such as 'sovereignty' or 'internationalised territories') and to replace them with a focus upon '*motions* or *operations*'. And yet none of these books really make anything of these motions or operations or try to analyse them in legal terms. For these authors, questions of legal form disappear when we take function into account. In contrast, I want to suggest that we might think about international administration as producing a form of government with a very particular character that legal analysis can help to make intelligible. How then might the functionalist call to relate legal concepts to 'actual experience' be met in the context of international territorial administration? The detailed practical and ideological material discussed in these books reveals certain key characteristics of administration as a form of rule that can inform this task.

[46] H Laski, 'The Responsibility of the State in England' (1919) 32 Harvard Law Review 447, 451. [47] ibid 452. [48] ibid.
[49] C Harlow, 'The Crown: Wrong Once Again?' (1977) 40 Modern Law Review 728, 729–730.
[50] Laski (n 46) 450. [51] ibid 451. [52] ibid. [53] F Cohen, 'Transcendental Nonsense and the Functional Approach' (1935) 35 Columbia Law Review 809, 825. [54] ibid.
[55] ibid 823. [56] ibid 827. [57] ibid 809, 827.

B. The Form of Administration

As Wilde makes clear, international territorial administration is premised upon the separation of title to and control over territory in the decolonized world. Wilde notes the importance of the argument made by Lauterpacht in 1956 that sovereignty can mean both the right of ownership and control over territory. Lauterpacht's approach can usefully be considered in relation to a legal debate about the distinction between ownership and control over private property that had begun to emerge prior to and during World War 2 in the United States and Europe. In the United States, Adolf Bearle and Gardiner Means argued that the emergence of the public corporation had led to 'a large measure of separation of ownership and control' over property.[58] The corporation had 'destroyed the unity that we commonly call property' by dividing ownership 'into nominal ownership and the power formerly joined to it'.[59] As a result, 'the old atom of ownership' had been dissolved 'into its component parts' and control over industrial property had been 'cut off' from 'beneficial ownership of this property'.[60] Berle and Means argued that this represented a 'radical shift in property tenure'.[61] Similarly, Franz Neumann argued that the rise of the joint stock company in Germany during the same period had meant that 'the capital function' had been 'divorced from the administrative one', and that this carried 'the germ for the development of managerial bureaucracy'.[62] Scholars saw the 'division of the functions formerly accorded to ownership' as a development that was revolutionary and potentially destructive in its effects on social relations, its concentration of power in the hands of a centralized management and its overall reorganization of economic activity.[63]

The separation of ownership and control was related to a shift in the mode of governance. Of particular concern to these scholars was that the separation of ownership and control had led to the creation of a new group or elite class of managers. Where in private corporations and small businesses 'owners managed and managers owned', the separation of the functions of ownership coincided with the rise of a professional class of managers.[64] The authority of this managerial elite was not based upon any particular legal status or formal title to property, but upon the possession and exercise of control over property.[65] As the power of the corporation intensified and control was separated from ownership, it was no longer clear whether the interests of the managers coincided with the interests of the beneficial owners of property, and how if at all the power and privileges of managers could be constrained.[66] This gave rise to legal questions about whether the interests of the managers coincided with the interests of the owners of property, the interests of the employees of the organization or with the general interest more broadly. Similar concerns were expressed about the growing bureaucratization of the industrial State. During and after the world wars, control over productive aspects of the State was increasingly vested in an emerging managerial elite. The question of whether those who controlled public money and services were divorced from the interests of the people was of concern both to left and right.[67]

The concept of managerialism was initially discussed critically as a troubling technique of governance that had grown out of the separation between ownership and control. Yet over time,

[58] AA Berle Jr and GC Means, *The Modern Corporation and Private Property* (The MacMillan Company, New York, 1933) 4.

[59] ibid 7. [60] ibid 7–8. [61] ibid 4.

[62] F Neumann, *Behemoth: The Structure and Practice of National Socialism 1933–1944* (Harper and Row, New York, 1944) 284–285.

[63] Berle Jr and Means (n 58) 119; ibid 285.

[64] AD Chandler Jr, *The Visible Hand: The Managerial Revolution in American Business* (Belknap Press, Cambridge, 1977) 9.

[65] J Murphy, 'The Rise of the Global Managers' in S Dar and B Cooke (eds), *The New Development Management* (Zed Books, London, 2008) 18, 19–21.

[66] Berle Jr and Means (n 58) 121, 353.

[67] See, for example, VI Lenin, *The State and Revolution* (trans Robert Service, Penguin Books, London, 1992); J Burnham, *The Managerial Revolution* (New York, John Day Company, 1941).

managerialism began to be theorized as a useful technique of control.[68] Managerialism as a philosophy and a practice endorses a division between the managerial or strategic part of an organization that determines ends, and the operational part of an organization that performs tasks needed to achieve those ends.[69] Management imparts its thinking to the workforce through policies, directives or strategies that are linked to funding, while the workforce is accountable to management through reporting on its operations and the extent to which it accomplishes the set tasks.[70] Management techniques such as the requirement that staff performance is audited,[71] the introduction of managed participation as a means of enhancing employee 'ownership' of goals, or the use of the 'project' as a means of increasing efficiency and predictability of outcomes, are used 'to monitor and control the actions of (often distant) others'.[72] Those managerial techniques have now been taken up as a form of rule to control not just employees but whole nations. As Stahn shows, managerialism is central to the conduct and scholarly representation of international territorial administration. Indeed, managerialism as a technique of control has intensified both within and through the UN since the end of the Cold War.[73] The government of people and places is now conceived of as a series of 'administration projects' (to use the language of Wilde), from which 'lessons' can be 'learned' (to use the language of Stahn) and coherent practices developed.

Managerial techniques of 'local ownership' and disciplinary surveillance themselves grew out of practices of colonial administration and indirect rule that characterized late colonialism in India, Africa and North America.[74] Indirect rule as a form of 'organization and reorganization of the colonial states' was designed 'as a response to a central and overriding dilemma: the native question.'[75] The question facing colonial rulers was 'how can a tiny and foreign minority rule over an indigenous majority?'[76] Indirect rule operated through local laws, customs and leaders as far as possible, with colonial law and the use of force resorted to by colonial powers in the last resort. 'This system did not simply deny sovereignty to its colonies; it redesigned their administrative and political life'.[77] Colonial administrators were given expansive powers to exercise 'control' over the territory, while a 'separate but subordinate structure' was created 'for natives'.[78] The effect was to create two forms of government—'one defined by sovereignty and citizenship, and

[68] A Prasad and P Prasad, 'The Empire of Organizations and the Organization of Empires: Postcolonial Considerations on Theorizing Workplace Resistance' in A Prasad, *Postcolonial Theory and Organizational Analysis: A Critical Engagement* (Palgrave MacMillan, New York, 2003) 95, 97.

[69] R Kerr, 'International Development and the New Public Management: Projects and Logframes as Discursive Technologies of Governance' in S Dar and B Cooke (eds), *The New Development Management* (Zed Books, London, 2008) 91.

[70] ibid 96.

[71] M Power, *The Audit Society: Rituals of Verification* (Oxford University Press, Oxford, 1997); D Neu, 'Accounting for the Banal: Financial Techniques as Softwares of Colonialism' in A Prasad, *Postcolonial Theory and Organizational Analysis: A Critical Engagement* (Palgrave MacMillan, New York, 2003) 193.

[72] Kerr (n 69) 94.

[73] On the intensification of managerialism and administration as techniques of rule in and through the UN, see further A Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press, Cambridge, forthcoming 2010). For the related argument that the 'scope and coherence' of managerialism has 'expanded exponentially in recent years', and that the World Bank 'has not only incorporated key postbureaucratic disciplinary strategies into its internal practices, but also externalised them' see Jonathan Murphy, 'The Rise of the Global Managers' in S Dar and B Cooke, *The New Development Management* (Zed Books, London, 2008) 18, 18–19.

[74] B Cooke, 'Participatory Management as Colonial Administration' in S Dar and B Cooke, *The New Development Management* (Zed Books, London, 2008) 111.

[75] M Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press, Princeton, 1996) 16.

[76] ibid.

[77] M Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (Pantheon, New York, 2009) 277.

[78] Mamdani (n 75) 62.

the other by trusteeship and wardship'.[79] It is important to note that these two forms of government were 'two parts of a single but bifurcated international system'.[80] What mattered were the relations between the two parts of the system.

These features of indirect rule and techniques of colonial administration have shaped contemporary international territorial administrations. If we look for example at the way that international administrators live, in separate 'zones' as in Iraq,[81] or subject to separate regimes of privileges and immunities, we can see the relation to systems of indirect rule which treated governors as spatially and legal distinct from the governed. International territorial administration works through local laws where possible, trumping them with administrative regulations and decrees where necessary to achieve the goals determined centrally. Local parliaments and courts are subordinated to administrative rule. As the institution of territorial administration expands and control is systematically separated from ownership, pressure grows to ensure that those who exercise power (in this case, the administrators) do so for the public benefit. A similar pressure for reform has historically developed in relation to other organizations, such as the Catholic church, the State and the corporation, as their power intensified and they began to be represented as entities whose representatives were separate from their members.[82] In the case of the church, the State and the corporation, reformists demanded that the powers and privileges of those exercising control over the institution be used 'in the common interest'.[83] The question remains how such a demand could be posed to the 'international community', and how it could be made effective in a world of territorially-divided States.

The realization that 'administration' is a specific form of rule with a long history has implications for the turn to accountability as a means of reforming the practice. Accountability is a core technique of administrative rule, by which those who are responsible for 'operations' (or means) report on the efficiency of their performance back up a chain of authority to those who formulate 'strategy' (or ends). It is therefore not enough for lawyers to argue for increased accountability without also attending to questions of constitutionalism and legal status—that is, questions about the subject of the legal order thus brought into being. Similarly, using administrative law to address the turn to administrative rule could be a liberal move, as claimed by the Global Administrative Law project.[84] The history of the turn to administrative law, however, suggests that it could equally be an authoritarian move. For example, in Weimar Germany, a concern with administration took the place of a concern with constitutionalism or State law doctrine. Michael Stolleis has drawn attention to the '"shift towards administrative law" that set in quickly after 1933'.[85] In large part, that shift was connected to the '"settling of the constitutional question" and the functional loss of state law doctrine' that accompanied the rise of Hitler and the 'establishment of the Fuhrer state'.[86] During the Weimar Republic, conservative State law theorists had argued that institutions such as parliament were no longer able properly to represent the will of the people. Carl Schmitt, for example, considered that parliamentarianism, with its commitment to discussion or conferencing, was no longer the appropriate means for realising democratic ends in the revolutionary conditions of the modern world.[87] Schmitt argued that the institution of parliament had 'lost its moral and intellectual foundation and only remains standing through sheer mechanical perseverance as an empty apparatus'.[88] For such thinkers, it was necessary for the State to take a new form that could better 'realize the identity between state and people'.[89] The establishment of Hitler's authoritarian State, founded upon 'the command of the leader' as a key technique of rule, appeared to resolve that question of the proper State form, and

[79] Mamdani (n 77) 277. [80] ibid.
[81] For an account, see R Chandrasekaran, *Imperial Life in the Emerald City: Inside Baghdad's Green Zone* (Bloomsbury, London, 2007). [82] Berle Jr and Means (n 58) 353.
[83] ibid. [84] Kingbury, Krisch and Stewart (n 2) 51–2.
[85] M Stolleis, *A History of Public Law in Germany 1914–1945* (trans Thomas Dunlap, Oxford University Press, Oxford, 2004) 373. [86] ibid 373, 375.
[87] C Schmitt, *The Crisis of Parliamentary Democracy* (trans Ellen Kennedy, MIT Press, Cambridge, 1988/1926). [88] ibid 20–1. [89] ibid 26.

made further legal debates about the nature and limits of government seem irrelevant.[90] 'Scholars who wished to contribute' and not to appear obstructionist or irrelevant 'had to devote themselves to administration, create the new legal doctrines appropriate to the authoritarian style of leadership, and seek to re-establish the contact with administrative reality that had been lost under the liberal law of the *Rechsstaat*, with its focus on the legal form'.[91] Jurists turned to administrative law 'to avoid the dangerous questions about what form the state would take, questions Hitler monopolized'.[92] A focus on administrative law 'offered a respectable way out, by allowing one to constrain the state with the fetters of the *Rechtsstaat* at least at the lower levels'.[93] This was an administrative law that was oriented to the new reality of authoritarian rule. Legal formalism was seen as necessary and useful in order to achieve certainty, regularity and security, but 'there also had to be room for a "creative administration" operating without legal rules'.[94] The old insistence that State intervention must be founded on general laws under parliamentary control was gone. Stolleis is not describing 'totalitarian despotism' but something short of it—the authoritarian State theory of the 'conservative revolution', which would seek to 'reconcile conservatism and modernity, a commitment to values and efficiency'.[95]

Looking to administrative law rather than constitutional law as a response to the expansion of the 'executive function of the international community' similarly ignores the question of who is the proper subject or agent of these systems of administration.[96] This has been the tendency in international legal doctrine relating to international territorial administration since Dag Hammarskjöld argued for the need to abandon the static 'conference approach' to international relations and focus instead upon dynamic 'executive action' as an instrument for managing decolonization.[97] Yet even in a system built upon increased rationalization and managerial rule, it matters who gets to choose the ends of government. Life can be rationalized 'in very different directions'—the 'modes of rationalization' adopted in a given situation will differ according to the values, presuppositions or ends 'that ground and direct the various ways of leading a rationalized style of life'.[98] The fact that the question of status has disappeared from contemporary legal studies of international territorial administration is thus a symptom of a broader loss.[99] Reading these books, it is hard to remember why there might be reasons to care what form of government is imposed upon a people, or whether they can choose their rulers or decide what ends are to be served by those in power. If policy is determined by global managers and the State is merely one 'executive agent' amongst others of a system directed from elsewhere, what does it matter whether the form of the State, its rulers and its ends are also determined by others? Authoritarian regimes are governed according to the principle that '[n]either parties nor associations, neither parliament nor public opinion should be allowed to impair the goal of an objective, task-oriented administration'.[100] This will be the effect of international territorial administration if

[90] FL Neumann, 'The Change in the Function of Law in Modern Society' in WE Scheuerman (ed), *The Rule of Law under Siege: Selected Essays of Franz L Neumann and Otto Kirchheimer* (University of California Press, Berkeley, 1996) 101, 138.

[91] Stolleis (n 85) 375. [92] ibid 373.

[93] ibid. [94] ibid 386. [95] ibid 374.

[96] For the argument that this is the question that functionalism avoids, see P Zumbansen, 'Law after the Welfare State: Formalism, Functionalism, and the Ironic Turn of Reflexive Law' (2008) LVI American Journal of Comparative Law 769, 783 ('What functionalism does not answer is who the author of regulation should be').

[97] *Introduction to the Annual Report of the Secretary-General on the Work of the Organization*, UN General Assembly Official Records, 16th session, UN Doc A/4800/Add.1 (1961).

[98] DN Levine, 'The Continuing Challenge of Weber's Theory of Rational Action' in C Camic, PS Gorski and DM Trubek (eds), *Max Weber's "Economy and Society": A Critical Companion* (Stanford University Press, Stanford, 2005) 101, 116.

[99] For an elaboration of the history of the concept of status, and why it might be a useful concept to use in seeking to grasp the forms of rule instituted by international authority in the decolonised world, see further Orford (n 73).

[100] Stolleis (n 85) 374.

the question of status and of the nature of the political community that this law brings into being is avoided.

III. CONCLUSION

What are the implications of the intensification of the practice of administration as a form of rule today? How to grasp those implications, in ways that might help to make the situation seem available to political action? These books are a reminder that the work of law is central to that task of making international territorial administration intelligible. The account they provide suggests strongly that international administration of the decolonized world, and the turn to administrative law in response, works to privilege security and order over self-determination and justice.

In conclusion, I would like to return to my opening question: how then should international law respond to a situation of emergency rule conducted in the name of creating order and justice out of chaos and insecurity? Given the strongly liberal tendencies in international law and practice over the past two centuries, we might have expected international legal scholarship to offer a resounding critique of the illiberal practice of international territorial administration. Yet, based on the evidence of these three books, this is not the case. These international lawyers do not offer up a straightforwardly critical response to the adoption of emergency rule by international administrators. They do not dogmatically assert that human rights and democratic participation must trump other concerns in a pre-revolutionary or civil war situation, and nor do their authors reliably occupy the position of external critic in response to the exercize of political power by international administrators.

Instead, these books reveal something more unexpected. They show that *raison d'etat*, revolutionary politics and instrumentalist visions of the relation between means and ends are alive and well and living in the United Nations. International territorial administrations are revolutionary regimes, designed to eliminate any existing laws, property relations and political cultures deemed illegitimate. Accounts of the law and practice of administration offer manuals in how to conduct a revolution and to make certain its effects are real and lasting. Yet in a significant departure from the revolutionary manifestos of a Machiavelli or a Marx, these studies of international territorial administration contain one further significant lesson whose effects are yet to be fully grasped. They teach us that in the 21st century, only the 'international community'—rather than the people, or the State, or the proletariat, or the party—may legitimately stage a revolution in the decolonized world. This would seem to have significant implications for the unfinished project of decolonization. To be meaningful, decolonization has to involve the redistribution of property and power both locally and globally. Yet from Suez and the Congo onwards, redistribution has been interpreted as a threat to international peace and security, to be managed through techniques of international emergency rule. Those techniques have been called 'administration'. Only international administrators can be trusted to suspend the law, to postpone the coming of democracy and to engage in radical forms of redistribution of property in the name of order and justice. Whether it is prudent to place such faith in international administration is a question for another series of books.

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