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BOOKS FROM OTHER DISCIPLINES

Birth of the State: The Place of the Body in the Crafting of Modern Politics

By Charlotte Epstein, Oxford: Oxford University Press, 2021. 327 pp. ISBN: 9780190917630 £22.00 (paperback)

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Within legal debate, the state and the body are discourses at once apparent and buried. Amongst international legal scholars, the state is all-consuming while the body is unimportant whereas, in the domestic sphere, state ascendency precludes the study of its existence, while the body as the liberal autonomous rational agent of consent is the principal preoccupation. Neither of those constructs bears much analysis. Trends within global, comparative and transnational legal debate endeavour to deconstruct the state and the body, but often do so in ways that cannot challenge, subvert or disrupt the character of either body or state, or to consider their intimacy in patterns of historic conditioning. In particular, we are so inured to ideas now considered common sense that tracing how perceptions of law, legitimacy and authority were naturalised via the body and state is very difficult. Within the canon, the male White body, as Epstein argues, remains the core and the naturalised state the subject of the modern world (p. 261). From this premise, Epstein undertakes a fascinating journey through security, liberty and property, making plain the processes of naturalisation so dominant that they now go unremarked. Epstein makes visible the concerns of the state and the body at the centre of law and politics.

While this is not a traditional book review, I begin by noting the quality of scholarship and writing in the *Birth of the State*. Do we need another deep dive into Locke and Hobbes? Epstein's answer is an emphatic 'yes', and the book amply shows what may be achieved in doing so. Moving from security to liberty and finally to property, the book deftly sets out how ideas that were not obvious or natural, and indeed were in some incidences alien to the medieval ideas that preceded them, were articulated so as to become naturalised. It does so by embracing the work of Foucault, Butler, Skinner and others, but not uncritically. The book shows the limitations in embracing one theoretical view and how a pluralism of critical approaches unbeholden to one methodology, particularly when examining the history of ideas, often achieves more than the sum of its parts. Naturalisation is at the core of book, namely how ideas become naturalised so that we no longer see them for what they are, constructs, but regard them as a priori matters of objective fact.

Reading *Birth of the State* from another discipline – a process that requires care and attention to disciplinary, linguistic and methodological contexts – two of the book's features come to the fore: first, the methodological choices and, second, the substantive arguments and where they are amenable to disrupting legal debate. Foucault, Agamben, Haraway and others are usefully and thoughtfully embraced amongst some legal scholars. Epstein fruitfully puts such scholarship to work in combination with her close textual analysis of Hobbes, Locke, Grotius, Suarez, Pufendorf, Bacon and others, bringing to the fore the processes of naturalisation of key concepts related to the state and the individual that ensued. In particular, it draws attention to the processes of Othering that underscored these naturalisations, where the non-White body, the women's body, the body of the criminal, the

body of the enslaved and the non-human world were lesser, warranted more disciplining, more control and where the state became and remains in Epstein's words a universality minus one (p. 211).

Epstein, in *Birth of the State*, takes figures like Hobbes and Locke and uses their texts and contexts to reconsider what we assume to be well known – what is, to use the language of the book, naturalised. Law is well satisfied with its categorisations of issues, questions and conundrums. Structural jurisdictional silos – temporal, disciplinary, territorial, multilevel – even the fundamental public/private divide, inhibit our ability to see the naturalisation processes that Epstein eloquently dissects. For instance, Epstein shows the human/non-human divide to be a modern paradigm. This binary is a key stumbling block for those attempting to regulate humanity's ecological distortions. Exploitation is deemed natural and necessary to assert Lockean property values and so common sense. The naturalisation of jurisdictional divides – to borrow Epstein's language – creates legal methods that reinforce those silos. The touchstones of legal (and political) thought in the West, be they Grotius, Suarez, Pufendorf, Hobbes or Locke, constructed those scaffolds but, by seeing them as that, as inventions, as narrative and as arguments to achieve particular ends – security, a form of liberty and property ownership – it becomes possible to get beyond their limits. Seeing beyond the horizons of these thinkers is essential if law is to go beyond the hierarchies of authority, agency and liberty created and supported by their legal-political analysis. It is only by recognising ideas as not just common sense, but as naturalised constructs that we can challenge and move beyond them.

In the book, the European medieval world is chimeric – another place, almost heterotopic, where things possess meanings that are a little (or sometimes a lot) different: a world familiar, but not. Often heterotopic difference is presented to reinforce a view that it ought to be left to rest in its otherworldliness. In the case of medieval Europe, this may be because of its theocratic tendencies or its feudal relations. Yet, as Epstein articulates, Grotius, Suarez, Pufendorf, Hobbes and Locke, in creating the world now familiar to us, also created a domain with equally alarming elements, including racialised slavery and reinforced gender hierarchies, with the body of the White man at its centre – a world now ensconced. Heterotopic spaces are useful in preventing discourse from challenging dominant views, as their strangeness or incompatibility makes them unnatural. Yet, by foregrounding this heterotopic medieval space, Epstein also demonstrates the lack of inevitability of the present world, and thus shows that capitalist colonialism and slavery or the patriarchal dominance of women's bodies was not inevitable, but rather a process of political and legal construction to make them appear as natural and legitimate.

The sections on security and liberty are illuminating, challenging and significant but perhaps what piqued most interest was the third section – that of property. The non-siloed view of property, the taking-together of Grotius, Suarez, Pufendorf, Hobbes and Locke in combination with the naturalisation of property and the establishment of private property as the core locus of the state, is a tale that law needs to imbue. The scaling of the state down to the body is a discourse to which legal scholars need to pay more attention. The last section of the book on property sets out how profoundly the body, and for Epstein the White body, is essential to organising the state, property and capitalism. This is true beyond the state as well. In other work, I consider the Security Council and the bodily scale, and it is only through that lens that the Security Council's unfettered power can be fully seen (O'Donoghue, 2021, p. 168). Epstein argues that the body was mobilised as a naturalising device in the making of private property (p. 178). Legal scholarship should endeavour to explore that space and examine where else the body is put to such tasks. The importance of a body of a particular kind and colour is essential, as non-Whiteness and bodily difference are intertwined to establish a particular order, constituting hierarchical difference as necessary to the state. Scaling the body within and seeing the body as core to the state and tracing those interrelationships and naturalisation processes reopen them to analysis and to a rethinking of where else such naturalisation processes occur.

The final chapter on the body and dissection is fascinating particularly in its grounding in scopic regimes. Ways of visualising and foregrounding what is seen and unseen are essential to law, particularly in what it chooses to legally see or not see. The male knowing subject and the female object of knowledge – where the female body is imperfect and is the inverted version of the canonical male –

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supports processes in which the regulation of the female body became a patriarchal obsession, and in which the public/private divide placed women's lives away from law's protection and so too from challenging political spaces (pp. 257–259). Intentional forgetting has long played a role within law, where women's political interventions and demands for space are sidelined and forgotten for their apparent irrelevance. Epstein's focus on the creation of the canonical White male body at the centre of the state and, as such, at the centre of security, liberty and property further elucidates the legitimising of processes of intentional forgetting. The canon is what must be preserved and remembered; all else is of mere passing interest. Female, criminal and enslaved bodies are each non-canonical, an Other or, as Epstein describes it, the 'minus one' in the universality created in the seventeenth century. In the contemporary era, Black Lives Matter and MeToo both seek to demonstrate that their bodies must be seen, must be visualised as relevant and not set against a universalised idea that excludes them. Legal scholarship needs to consider its own scopic regimes, what it sees and does not see and what that means for its ability to respond to calls for fundamental change that movements like Black Lives Matter and MeToo demand. Scopic regimes in law are extremely hard to dismantle, particularly where they are engrained as common sense, but just as Grotius, Suarez, Pufendorf, Hobbes and Locke were the vanguard of altering our views of the body and the state, such upheavals remain possible today.

The co-constitution of the state and the modern political subject, and its relationship with the emergence of modern scientific methods, is an important perspective on how we got to where we are and, as Epstein readily admits, her work is but one amongst a plethora (pp. 2, 5). Feminist debate on the bounded state usefully centre women's bodies in how we view the state (Naffine and Owens, 1997, p. 85); the role of personification and metaphor equally sheds light on how we regard that relationship (O'Donoghue, 2018); the role of revolution and revolt also forms part of the story and how constituent power was seized at various moments (Colley, 2020), particularly by those amongst the 'minus one' in a universalised – White male – world.

Law as an ultimately conservative exercise often finds deep self-reflection difficult and indeed, for some areas of law, asking questions of itself remains beyond the pale. There are scores of theses on what law is, but rarely is there reflection on its co-constitution of the modern world beyond self-congratulatory, almost messianic views of its role in universality, in constitutionalism, in upholding property or in rights. Law is co-constitutive of the 'universality minus one'. Law is co-constitutive of silos that prevent real action against the destruction of our surrounding ecology. Law is co-constitutive of the hierarchies of harm and international forgetting. By law as 'co-constitutive', I mean us as legal scholars as co-constitutive actors: just as Grotius, Suarez, Pufendorf, Hobbes and Locke were, so are contemporary scholars engaged in reconstituting the naturalisation processes of that era. But none of that is inevitable. Change is always possible, and every generation is as capable as every other. We are now in an era in which co-constitution could spread beyond the White male body and it is here, amongst the 'minus one', from which a new form of legal co-constitution of the state and the body must emerge.

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