emancipation rolled out in the North, freed men, masters and former masters all took legal steps to distance themselves from the debts of Black women.

Different readers will draw different insights from *Wives Not Slaves*, but for me, Sword's most important contribution is how she confronts us with the fundamental importance of marriage as a cornerstone or even archetype of authority and shows how a concern with naturalizing patriarchal and authoritarian power took hold, gripped the law through the "novel and contested" (p. 138) reformulations of Blackstone and others, and simultaneously vanished into the background, as the scandalous, tawdry, sometimes titillating and often highly contingent and politicized details of the cases were treated as beneath the notice of the wise, male legal reader. Doctrines of legal authority (and the common law itself) were perpetuated; insights into the contingencies, greed, and petty meannesses that lay behind them were concealed. The law concerning marriage was constructed counter-factually not as a constantly evolving mess of localized and institutional variability but as an ancient framework that increasingly protected women and their vulnerabilities. On both sides of the Atlantic, through the vicissitudes of revolution, the urge to shore up white male power remained a constant.

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Unsound empire: Civilization and madness in Late-Victorian England. By Catherine Evans. New Haven: Yale University Press. 304 pp. $65.00 hardcover

Reviewed by Binyamin Blum, Professor of Law, University of California, Hastings College of the Law, San Francisco, California, USA

The nineteenth century, especially its latter part, was a period of considerable advances in psychology, anthropology, and law. Catherine Evans's *Unsound Empire* ties together all three, to uncover the tensions between them as manifested in the realm of criminal responsibility. The book explores the "nineteenth century debates over who was mentally fit enough—in legal language responsible—to be convicted in British criminal courts." (p. 2) Through these contests over responsibility, the book exposes the paradoxes inherent in colonial governance, and criminal responsibility more generally.

Colonial governance was premised on Britain's civilizing mission, which assumed the superiority of Europeans over colonized races. Bolstered by legal anthropology and the works of criminologists such as Cesare Lombroso, such theories assumed criminal propensities among the colonized. Such tendencies were considered by most to be innate, largely a result of nature rather than nurture. Meanwhile, nineteenth century mentalists increasingly argued that criminality stemmed from mental and moral defects, rather than from weakness of the will. Criminals were born, not made. Yet carrying these racial and psychological theories to their natural conclusion—namely that individuals were not truly free to choose criminality but were instead destined to offend—risked undermining the premise upon which criminal justice rested. Whether punishment was justified through retribution or rehabilitation, the criminal legal system presumed—and had to presume—an actor's free will. Otherwise, their punishment would be both unjust and futile.

Building on this literature, Evans explores these paradoxes through the archives of England, Canada, Australia and India. The choice stems, Evans explains, from these jurisdictions' legal sophistication and their political and economic importance, as manifested by the depths of their archives. Though criminal law differed from metropole to colony and between the colonies themselves, Evans finds striking commonalities and coherence in the underlying logic of criminal responsibility. Though distinct, she argues, the colonies were "not entirely different." (p. 15).

Even within England, the boundaries of legal responsibility in the Victorian era were contested, unstable, and largely out of step with Victorian science. Though perhaps pragmatic in providing legal clarity, the 1843 *M'Naghten* rule for insanity was inconsistent with Victorian psychology and medicine. The rule, still very much with us to this day, stated that "To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong." (p. 27).

The *M'naghten* rule focused exclusively on the cognitive abilities of the defendant, and limited the insanity defense to only the delusional, who suffered from a distorted perception of reality. Such defendants, Evans explains, had a "diseased understanding [of reality], but an intact moral sense" (p. 75). Many defendants were, however, in the reverse potion. "They saw the world as it was and committed antisocial acts anyway." *M'Naghten* failed to take account, for example, of those suffering from irresistible impulses, whose will had been overcome. Or those suffering from monomania and the motiveless need to kill. The reason why *M'Naghten* could not take account of such mental conditions was mostly pragmatic, not principled: if recognized, some of the most heinous crimes would remain unpunished.

The compromise struck, tied closely to the history of the mandatory death penalty, was to pronounce some such defendants responsible and therefore guilty, but exercise mercy to mitigate their punishment. This, again, was a pragmatic rather than a principled approach. Evans skillfully shows how clemency was, however, doled out selectively based on parameters such as gender and race. Women accused of infanticide, for example, often evaded punishment despite full awareness of their acts because they were presumed to be "innately less responsible." To enjoy clemency, however, female defendants had to adhere to Victorian notions of feminine vulnerability. "Women whose violence seemed to be motivated not by despair, fear, or trauma but by cupidity and anger transgressed against both femininity and the law. They would be punished." (p. 126).

Racial theories similarly led to the conclusion that indigenous populations were innately less responsible for criminal acts. But how could one distinguish mental limitations, which should mitigate or even exempt a defendant from punishment, from "cultural pathology"? "How could responsibility or mental abnormality be determined among people Britons routinely construed as innately abnormal?" (p. 161) Intersectionality and "half castes" only further complicated the matrix. As with gender, defendants who successfully performed the British civilizational script of racial inferiority or native savagery fared better than their counterparts who challenged those racial hierarchies outright. Some defendants also successfully invoked the notion of "deculturation," arguing that rapid exposure to British civilization was to blame for their seeming derangement. Yet here too, there were limits to successfully invoking racial difference: reliance on cultural norms rather than racialized biology could aggravate punishment rather than mitigating it. Though "cultural defenses" did succeed occasionally, they were far more difficult to invoke successfully, especially when the custom practiced was one that the British had set out to eradicate in the name of their civilizing mission. Thus, while puerperal insanity might mitigate the punishment of a homicidal mother, succumbing to cultural pressures to commit female infanticide would not. When crafting their defense, criminal defendants and their lawyers would therefore have to carefully straddle an unstable and shifting line between race and culture to effectively appeal to the sensibilities of judges and administrators.

Evans's work is the latest effort to tap the archives regarding legal insanity to see what they might teach us about citizenship, responsibility, and the threshold of personhood during the nineteenth century. Evans draws from a broad array of colorful yet utterly shocking stories of senseless killing to illustrate her theory. The cases she recounts are not for the faint hearted. Yet the result is a microhistory of the British Empire which skillfully illustrates broad trends, which are often obscured by an exclusively regional focus. It is imperial history at its finest, without the loss of local nuance or detail.

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Evans provides pertinent biographical details not only about the criminal defendants but about their lawyers and judges, thus also depicting the bench, bar, and bureaucracy of the empire. She also provides crucial background for those not versed in the details of Canadian anticolonial rebellions or the judicial structure of the British Raj. The result is an accessible book that sacrifices neither sophistication nor subtlety. It should be of interest not only to historians of the criminal law of insanity, legal responsibility, or colonialism in the jurisdictions surveyed but also to those seeking a methodological model for writing histories of empire.

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The gun, the ship and the pen: Warfare, constitutions and the making of the modern world. By Linda Colley. New York: Liveright, 2021. 512 pp. $35.00 hardcover

Reviewed by Marcio Cunha Filho, Michael López Stewart, Institute of Public Law, Brasília, Brazil

Our collective legal consciousness connects the rise of Constitutions in the late 18th century to the fight for limiting the power of government, to the establishment of liberal democracies, and to the embedding of individual rights into the core of political systems. This view, which has been advanced by scholars such as Fioravanti (2001) and many others, is perhaps based more on a romantic interpretation of history than on actual historical facts. In her new book, historian Linda Colley presents a radically different approach. Her main argument is that Constitutions emerged as a consequence of hybrid warfare, that is, wars that, for the first time in history, involved intense, large-scale conflicts on both land and sea. These massive conflicts drastically increased the costs of war and pushed States to reconfigure political pacts with their respective societies. For the first time, military conflicts were almost global in scale, and their magnitude destroyed the existing political order. Political leaders around the globe needed new justification to raise funds and draft male soldiers to face these challenges. Constitutions—understood in Colley's work in a broad sense, so as to encompass all foundational documents that organize the distribution of power within a territory —served as vital pieces of innovative political technology that gave states legitimacy to impose significant sacrifices on their societies.

This quid pro quo helps explain why this first wave of Constitutions expanded suffrage only to men with property. These were the men that States wanted to tax or conscript; it was their support they were looking for. There was no need to grant rights to women or landless men—the perception was that they did not contribute to the war effort and thus should not have a say on the rules of the game. This is why the few experiments that granted suffrage to women before WWI were either distant islands far from any imperial power (such as Pitcairn, the Cook Islands, New Zealand or Australia), or, in the case of the United States, distant territories that were also somewhat safe from the imminent threat of war (Wyoming, Utah, Colorado e Idaho). The relative peace of such places allowed states to engage in more diverse constitutional experiments. The expansion of suffrage to women after WWI is also connected to the changing perception about the role women actually played in warfare.

The focus on warfare as an engine for state building is not necessarily a new argument—Tilly's work (1990, 1985) is the best example; contemporary academics such as MacMillan (2020) also underscore the central role wars had in configuring and reconfiguring political orders. But Colley adds a new layer to this argument. The logical consequence of the argument that Constitutions were part of a military strategy of preparation for war is that the emergence of Constitutions was by definition a global endeavor. In fact, the military conflicts that emerged in the second half of the 18th