

dead which “only very occasionally rises above the parapet of literate record” may have informed late Anglo Saxon law’s perception of the outlaw and exile (555).

What is striking about this *Gedenkschrift* is that no particular theory of history governs these medievalists’ work. They consider themselves interdisciplinary historians, but their excitement pertains to learning about substantive knowledge that they lack, not methods. Indeed, these medievalists do not think about paradigms and analytical categories at all! This deeply impacts their diction and style of writing. Many legal theorists, seemingly more intellectually secure with concepts that are inert and colorless, give them arms, legs and vocal chords permitting them to walk upon the earth. Nor, however, do these medievalists cling to empiricism and materialism. Rather, they discern history as the story of worlds, that is to say of worldly-being, which is humanity-clothed. In both contemporary English and Old English *world* derives from *wer + ald*, “age of man,” which loosely may be translated as “human existence” or “human-life.” A dramatic difference exists between the warmth, immediacy and fluidity of these papers that yields the surprise of humanity pride of place and the mechanical dead maze of formulaic phrases that cunningly removes humanity from our world’s horizon which dominates current work in legal theory.

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Transnational Torture: Law, Violence, and State Power in the United States and India

By Jinee Lokaneeta, New York: New York University Press, 2011. 301 pp. \$55 (Cloth).
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Liberal democracies define themselves, at least in part, as constitutional orders that limit the kinds of violence that the state may legitimately deploy against its own citizens. Among the constitutional limitations of state power, the prohibition of torture occupies a prominent place, because unlike other rights and protections that may be curtailed if they conflict with important public interests, the ban on torture is frequently considered absolute and inviolable. Yet despite this prohibition, torture as well as cruel, inhuman, and degrading treatment appear to be alive and kicking in liberal democracies, as evidenced by the stream of disclosures of prisoner abuse (whether in Guantánamo or elsewhere), by the now infamous torture memos, by the seamless cooperation of dozens of U.S. client states in the CIA’s abduction and rendition practices, and by recent debates among academics and pundits about the permissibility of torture in the war on terror.

Jinee Lokaneeta’s new book, *Transnational Torture*, takes these debates as a starting point to examine the jurisprudence of torture in the United States and India. She argues that the ceaseless avowal of the impermissibility of torture, both in public discourse as well as in legal opinions, conceals a lack of clarity and precision in demarcating the line between permitted and prohibited practices of interrogation and punishment. According to Lokaneeta, both the Indian and the U.S. Supreme Courts

have failed to provide comprehensive definitions of torture and have avoided stipulating clear and consistent safeguards for detainees. This evasive and ambiguous jurisprudence manifests a “politics of denial” (45), where the official disavowal of torture obscures various coercive interrogation practices and downplays the significance of various forms of custodial violence that are unchallenged by the courts.

Of the seven chapters of Lokaneeta’s book, four treat the torture jurisprudence in the U.S. and India and one is about the TV show *24*. The project of the book is rounded out by a substantial introduction (and conclusion) that situate torture in the tension, inherent in liberal legal theory, between law and violence. Yet in contrast to the current trend of understanding this tension in the Schmittian/Agambenian vocabulary of the state-of-exception, Lokaneeta insists that torture in liberal democracies is not an exceptional but a routine phenomenon. Conceptualizing torture as excess violence, Lokaneeta contends that the torture debates manifest “the liberal state’s inability to contain excess violence” (32). The implication of the state’s inability to dispense with excess violence, so Lokaneeta argues, is that the Foucauldian paradigm of governmentality needs to be reconceptualized in order to account for the continued role of excess violence in contemporary liberal democracies.

While it is empirically indisputable that states use forms of violence that they simultaneously disavow, I am not entirely convinced by the larger argument about governmentality. The claim that the Foucauldian analytic cannot accommodate torture seems to be based on a confusion between spectacular and hidden forms of violence: Foucault describes the decline of *spectacular* torture, that is, of state violence as a sovereign performance. The persistence of *concealed* forms of state violence (including torture) does not therefore subvert the Foucauldian argument or occasion a need to reconceptualize the governmentality analytic. But this is a minor quibble, for the contribution of the book does not hinge on the governmentality framework. The insightful thesis about how the evasive jurisprudence on torture produces a space of strategic maneuver provides ample food for scholarly thought.

And indeed, the book really shines in its analysis of case law. The section on the U.S. Supreme Court makes a compelling case that the Court has systematically sidestepped the issue of torture, both in its pre-9/11 jurisprudence and in the post-9/11 decisions about the rights of enemy combatants. Lokaneeta’s historical analysis of the Court’s torture jurisprudence is especially noteworthy. A synoptic digest of the Court’s key decisions concerning the due process clause and the right against self-incrimination from the late 19th through the 20th century distinguishes between three regimes of constitutional protection: the principle of voluntary confession that derives from the Fifth Amendment right against self-incrimination, the principle of voluntary confession rooted in the Fourteenth Amendment due process clause, and the *Miranda* regime drawn from the Fifth Amendment.

The two chapters on torture and interrogation jurisprudence in India are similarly rich. They examine torture in the context of three legal regimes: the right against self-incrimination, procedural safeguards in the recording of confessions, and the Indian Supreme Court’s evolving custody jurisprudence. As Lokaneeta shows, the Indian Supreme Court’s torture jurisprudence took shape in part as a response to the high number of deaths in custody; and yet, while the Court has developed an innovative custody

jurisprudence, the focus on custodial deaths has let the larger problem of torture (as well as cruel, inhuman, and degrading treatment) fade into the background. Thus, like its U.S. counterpart, the Indian Supreme Court has consistently evaded the problem of torture, in part through a somewhat erratic jurisprudence and in part by focusing on the problem of custodial deaths rather than addressing torture comprehensively. A second chapter on torture and interrogation in India revolves around emergency legislation against terrorism from the mid-1980s through the present.

Whereas the four chapters on the Courts' torture jurisprudence and on emergency legislation in the U.S. and India are very persuasive, the chapter on the TV show *24* is less convincing. Not because Lokaneeta's claim about the show's sanitized and routinized depiction of torture is inaccurate, but because the author fails to address the difference between analyzing a TV show and evaluating legal documents. Unlike Supreme Court opinions, which represent the official state discourse about torture in verbal form, a TV show partakes in a fluid cultural field, and it does so through the medium of film, with its own grammar and conventions. These differences in form, medium, and authority call for more careful theorizing. Thus, attentiveness to the visual medium might, for example, have provided an opportunity to discuss the racialization of torture and to include a critical race dimension in the larger argument about torture and the politics of denial.

But these criticisms do not diminish the significant contribution this book makes to the scholarly literature on torture, to contemporary theorizing about law and violence, and to socio-legal studies more generally.

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Trafficking Women's Human Rights

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