



## Introduction

The English poet William Blake provides one of the keenest allegorical descriptions of tyranny. Urizen embodies reason and law using architects' tools and nets to entrap society in webs of law and convention.<sup>1</sup> Urizen believes himself holy and writes the law. The book of brass, brass being the metal of tyranny, forces peace through single rule.<sup>2</sup> Urizen is also the creator of wrath and justice. Urizen binds people utilising law and convention to stultify imagination and rebellion. Orc, in contrast, embodies rebellion, revolution, passion and freedom, the very opposite of Urizen's tyrannical god. But the two are intertwined.<sup>3</sup> Urizen uses law to enforce reason, peace and oppression which Orc rebels against with creativity and revolution, but Orc also demonstrates a potential to descend into tyranny if Urizen's tyrannical tools are not entirely discarded once he is overthrown.<sup>4</sup> Blake's complicated mythology mirrors tyranny's complexity. Tyranny uses law and reason to establish that absolutism is necessary for peace. Tyrannicide recognises the necessity of rebellion, the false restraint of both rule by law and fear of anarchy, but, as such, tyrannicide is only legitimate if it does not replicate the tyranny it seeks to overthrow.

Contemporary legal debates make little use of tyranny, international law even less so. Tyranny seems old-fashioned, an outdated term for Caligulas and medieval monarchs surpassed by modern descriptors of governance. But tyranny remains a bogeyman against which the best

<sup>1</sup> H Bloom, *The Visionary Company* (Cornell University Press, 1993) 71, Urizen first appears in *A Song of Liberty* (1793), *America a Prophecy* (1793), *Songs of Experience* (1794), *Book of Urizen* (1794).

<sup>2</sup> S Foster Damon, *A Blake Dictionary* (University Press of New England, 1988) 424–426.

<sup>3</sup> *Ibid.*, 309, Orc appears in *America a Prophecy* (1793) and *Europe a Prophecy* (1794), *The Book of Urizen* (1794) and *The Four Zoas* representing the American and French revolutions J Bronowski, *William Blake and the Age of Revolution* (Faber & Faber, 2012).

<sup>4</sup> C Z Hobson, 'Unbound from Wrath: Orc and Blake's Crisis of Vision in "The Four Zoas"' (1993) 33 *Studies in English Literature, 1500–1900* 725, 726.

governance systems are bulwarks and has recently made a comeback in political discourse.<sup>5</sup> Tyranny's spectre requires continuous vigilance and a mixture of political, social, economic and legal salves to prevent its advent, unless, of course, its advent is intentioned. Tyranny and law are intertwined. Law is both a ballast to prevent tyranny but also one of tyranny's key instruments. Tyranny's absence from international legal debate might lead some to assume that the international order is uniquely immune from tyranny's ubiquity. This book, however, explores the links between law and tyranny and lays bare the disappointments, harms and vagaries of international law illuminated by tyranny.

Interventions from Third World Approaches to International Law (TWAIL), feminism and critical legal studies demonstrate international law's ease with cruelty, harm and violence while also attending to the possibilities of positive change. Yet, debates on global constitutionalism, administrative law, legal pluralism and global law rarely acknowledge either the existing internal critique of harm or the legal order from which they borrow – the domestic constitutional order – as a system emergent from and intended to stave off tyranny. Identifying tyranny's presence is an essential step in creating a legitimate, fair and effectual governance order. If, as is repeatedly recognised, tyranny is always potentially present, it would be remarkable to find it absent from international legal governance. This book sets the terms by which tyranny can be recognised and thwarted within international law.

Locating tyranny within its workings does not terminally condemn international law. Tyranny's ubiquity is such that to denounce international law on this basis would be to damn all governance systems. Rather, when considering change and reform, two questions are important: first, what is to be thwarted and, second, what is the best remedy? This book rests on the premise that by locating instances of tyranny in international law we are better placed to identify the tools to contain and remove it and, perhaps, push towards a more honest debate on the impetuses conditioning the governance models that, of late, have gained traction.

Debates on city states or world government commonly consider the alchemy necessary to find an equilibrium between competing interests while maintaining capable governance. Tyranny stalks these debates.

<sup>5</sup> T Snyder, *On Tyranny: Twenty Lessons from the Twentieth Century* (Tim Duggan Books, 2017) 9–13.

Arendt argued that the twentieth century saw tyranny surpassed by totalitarianism; Kant feared that world government is inevitably tyrannical; the Federalists believed they were establishing a constitutional order that reined tyranny in; Machiavelli considered how to balance effectual governance, a strong legal state, with the means necessary to maintain power; William of Ockham posited the Catholic Church as an alternative source of tyranny; while Thucydides worried that the Athenian Republic could be constitutional at home and yet tyrannical abroad. Each is concerned with recognising existing and potential tyranny, removing it and ensuring a system is created that prevents its return. This book draws these accounts of tyranny together and brings the sum to bear on twenty-first-century international law, because if tyranny is present it is all our duty to remove it and not be seduced by the legal reason, convention and stability offered by Urizen.

### Tyranny

Tyranny is not merely a synonym for corrupt or evil government; it is far more complex. If it were merely about Caligulas it would not have occupied so much space within political theory and, occasionally, legal debate. Nearly every continent has historical or current figures that pursue tyrannical practices. The caricature single figure tyrant occupies popular imagination, but other forms, such as bureaucracy, technology, world government, majorities and elites, all carry parallel characteristics and have made their way into the zeitgeist. Franz Kafka's *The Trial*, for example, provides an articulation of one modern form. While the popular invocation of tyranny establishes a cartoonish figure of excess and cruelty, both of which can be present, tyranny is far more complex. For all its ubiquity, a positive definition is rarely offered. Encapsulating all the moral, philosophical, historically specific and political characteristics of tyranny is challenging and so it is frequently discussed by type, by context or within political tracts as a specific person or group.

When some argue that every individual could be a tyrant, its extent can seem overwhelming, and although there are reoccurring tropes, instances where every element of tyranny is present are few. Tyrannies can be benevolent. They can usher in periods of peace, prosperity and stability, albeit the greatest benefits accrue to the tyrant. When matched with ideology, tyranny may be thought 'good' and necessary to bring

about change, even as it unleashes cruelty.<sup>6</sup> Tyrannies can be faceless and bureaucratic, and usher in brutality and silence through their featureless operation (a seemingly modern form of tyranny, though not without historical examples). Tyrannies can be led by a single figure, a group or maintained by a majority or an elite minority. Tyranny can result from the sheer numerical mass or geographical scale, which is to be governed, including the impact of core and periphery on governance. The impacts of tyranny are often gendered. Tyranny always appears where there is imperialism. Tyranny is often accompanied by violence or its threat, silencing political debate. Tyranny is thus not defined by number or size, or ideology; it is potentially present wherever there is governance.

Many governance orders aim to establish a system that prevents humanity from acting out its base hunger for tyrannical power. Some aspects of the international legal order, such as the UN Charter, make such claims. Whether everyone is a tyrant-in-waiting, or if this trope assumes a constructed ideal of a strong active citizen that is both gendered and culturally questionable, is beyond this monograph's scope. Nonetheless, adoration of power sits at the root of tyranny and a distrust of humanity that accompanies these debates is significant, because this is where law often emerges. Constitutionalism arose during the Enlightenment in Europe as the ultimate bulwark against unmitigated power. Earlier iterations of the rule of law, democracy and republicanism sought to thwart tyranny, though law is rarely regarded as the sole solution.

Amongst its characteristics, tyranny's unique relationship with law is at the heart of this book. Tyrannies are regularly full of law, but absent elements of demos, equality, rule of law and political debate. Tyranny often co-opts and utilises law in its operation, hiding its lack of legitimacy beneath rule by law. Rule by law, but crucially neither rule of law nor constitutionalism, is operational in tyrannies. Law might be everywhere, but lawful tyranny is, in fact, lawless. Tyranny fills the vacuum in transitions from one system to another, utilising fear of anarchy to create and enforce laws unattributable to any process recognised as fulfilling the rule of law. Tyranny enables political decisions unconstrained by law, where the legal order enables rather than restricts or holds political action to account. Thus, examining law, its creation, its enforcement, its adjudication and how it is used to order, and discipline, is essential to

<sup>6</sup> J S Fishkin, *Tyranny and Legitimacy: A Critique of Political Theories* (John Hopkins University Press, 1979) 3.

understand tyrannies. This book uses law, and especially international law, as its focus. Nonetheless, it is the interrelationships between political choices and legal structures which ensure the longevity and effectiveness of tyranny. This holds particular significance for the latter half of this book's discussions of scale and imperialism.

Tyranny has bedfellows: tyrannicide, tyrannophobia and tyrannophilia. Tyrannicide, the removal, at times violently, of tyranny often centres on when a duty and/or right to tyrannicide emerges. Tyrannophobia, a creation of Hobbes, is the foolish fear of tyranny which leads an individual to confuse it with and oppose strong (tyrannical) government. Tyrannophilia, an invention of Mark Lilla, is a theorist's appreciation of tyranny in the accomplishment of a governance ideal. This last example is discussed briefly, while the others form critical strands of argument.

The neglect of such a prominent feature of governance debates by international legal scholarship is perplexing. Suggestions that tyranny offers little for our understanding of law, and more specifically international law, often rely on caricature to dismiss its relevance. Looking to international law, its troubled relationship with democracy, with imperialism, with gender, with the rule of law, with substantive equality and with bureaucracy, while reflecting on its ability to produce some benevolent outcomes, means that we must assess whether it possesses some tyrannical attributes. As will be discussed, the duty to tyrannicide requires action to be taken whenever and wherever tyranny is identified. This duty extends to all those who live beneath its shadow, but especially on those who, through their actions, maintain its practice.

### Tyranny and International Law

This investigation began by asking why had international legal scholars shifted towards theories of constitutionalism, administrative law and pluralism? Is this shift connected to the concerns which had drawn Enlightenment theorists towards the same concepts? While this second question remains unanswered, as will become evident in Chapter 1, a partial explanation of the first can be derived from the second. As my work on this book progressed, articulations of authoritarian (and other) constitutionalisms which maintain constitutionalism as a label, despite no longer retaining the separation of powers, rule of law or democratic legitimacy, became ever more common. But why retain the moniker? Why do authoritarian figures, at a superficial level, maintain their

commitment to constitutionalism when it is supposedly antagonistic to the tyranny they oversee? Though the psychological elements of that query are beyond this book's remit, tyranny's importance as a specific form of governance seems prescient. Contrariwise, to argue a system is becoming constitutional is to suggest it is not, or is no longer, tyrannical. This seemed to provide a plausible partial explanation for the drive towards global constitutionalism and other recent isms with in international law.

Both international relations and political theorists debate the possibilities of world government and tyranny, yet beyond peripheral interventions by feminist, Marxist and TWAIL scholarship, mainstream international legal scholarship remains focused on formalism, positivism and constructivism. Rarely is the type of governance order that the legal system reflects or sustains questioned. This book does not condemn international law as tyrannical, but rather provides an entry point to ask questions of that legal order: how it creates law, how it supports decision-making, how it provides for contestation and where the political lies within it. It questions areas often considered unassailably positive, such as human rights, development and the regulation of the use of force, and considers what we may be sacrificing to achieve the legalised political outputs commonly regarded as beneficial. If examining whether tyranny is present has no place within public international law, what does that reveal about the space of contestation within it? No order is immune, no system so perfect for tyranny's potential not to lurk. The dominance of jurisprudential queries within the international legal order must not displace questions about the order this jurisprudential form supports.

Unconcerned with the possibility of the international legal order's tyranny, international lawyers' interest in world government tends to begin and end with Kant. Seldom does analysis consider whether international law may already have reached the point Kant feared, not a world government, but a tyranny. In contemporary debate, world government does not mean the replication of the sovereign state, as Dante recommended. It has a much looser form. The potential for tyranny is found in the first of three rationales against world government within international relations discourse that Lu summarises as lack of feasibility, desirability and necessity.<sup>7</sup> Critics flag the possibility of minority tyranny (elites), absence of democratic engagement, the need to protect local

<sup>7</sup> C Lu, *Just and Unjust Interventions in World Politics: Public and Private* (Palgrave Macmillan, 2006).

communities from homogenising tendencies, the excesses of global capitalism and a paucity of justice that feeds into world government's unfeasibility. But these critiques are familiar to those who study international law. Less menacing options include global governance, but as will be discussed, these are also problematic, because their looseness and informality inevitably secure the position of elites. This book asks whether the international legal order possesses some characteristics that anti-world government sentiment fears, while lacking the precautions that those sympathetic to world government advocate.

Beyond critical voices there is little suspicion that traditional international law may operationalise humanity's tyrannical tendencies. There is scant concern that international law often blithely ignores the checks which most scholars consider necessary to rein in constituted power. Rather, international law resembles 'the Ten' in Machiavelli's Discourses. The Ten, in Republican Rome, having been elected by the plebeians, established new laws and offices. The Ten then went on, having created these structures, to eliminate any checks provided by the Roman Senate or Counsels. In contrast to the constitutional office of Roman dictator – temporally limited and prevented from dismantling the constitutional structure – the Ten were, as Machiavelli saw it, tyrannical. International law creates new institutions, structures, offices and legal regimes without check. This can be both for the good and the bad, but international law's progressive and positive reflections on its history and structures renders questions of intent or the nature of its unfettered power all but unaskable.

### Structure

This book is divided into two parts. The first outlines tyranny's history within political philosophy, including tyrannicide and tyrannophobia, and the second looks at two examples of international law in operation, the UN Security Council responses to terrorism and international economic law. Tyranny, like every other governance form, is a social construct and so there is no single iteration that is appropriate for all time and circumstance. Rather tyranny is informed by its invocation in theory and in practice (and in law) and so too are its corollaries tyrannicide and tyrannophobia. The first part of the book thus details theorists' discussions of tyranny and establishes the basis on which tyranny (and tyrannicide) is not merely a synonym for bad or corrupt government, but rather a specific governance form that evolves within sociopolitical

contexts. The analysis also provides the grounding for a taxonomy which, in turn, provides the basis for understanding tyranny's contemporary form. The second part of the book applies this taxonomy to contemporary contexts to ask necessary questions of public international law.

### Method

Examining every debate on tyranny would be a mammoth task. Rather than striving for completeness, the book adopts two approaches: first is a linear account of tyranny's historical theoretical development. The history begins with the classical period, the chapters move through medieval accounts, the enlightenment, the modern period and finally contemporary analysis. Taking this linear approach enables the reader to observe two points. First, tyranny is nearly always present in discussions on governance and, second, that tyranny always maintains a relationship with law.

Inevitably, there are omissions. Western accounts of tyranny often rest on stereotypical descriptions of tyranny elsewhere.<sup>8</sup> The analysis does not imply the absence of other histories or their irrelevance; rather, as international law is a Western construct, its corollary tyrannical construct can be applied to demonstrate the hypocrisy that abounds. Furthermore, the book rarely engages with historical examples of tyranny, focusing instead on the theoretical discussions that were occurring within those contexts. A major exception is the period of transition from Republican to Imperial Rome, where events and theorists are both considered. These events often form the basis of later analysis and are therefore important in considering later theories. Even within Western theory, theorists are inevitably omitted.<sup>9</sup> The theorists discussed represent the variety of debate in an effort to prevent dogmatism or the suggestion that tyranny is consistent across centuries. Theorists that represent innovations in tyrannical thought were chosen to demonstrate the impact of context, particularly the emergence of other governance scales and forms.

Next is a thematic account that develops a taxonomy of tyranny that serves as the basis for the second half of the book. The taxonomy is

<sup>8</sup> N Panou, H Schadee 'Introduction' in N Panou, H Schadee (eds) *Evil Lords: Theories and Representations of Tyranny from Antiquity to the Renaissance* (Oxford University Press, 2018) 4.

<sup>9</sup> Tyranny in the Biblical and Byzantine settings are omitted see further *Ibid.*, 27.



classified further to better understand the how and why of tyranny. The exploration of why tyrants seek to rule encompasses both the possibilities of humanity's tyrannical tendencies and the types of benefits which tyrants accrue. The question of how tyranny is created addresses both fear and illegitimacy: how tyrants' rule comprises rule by law, beneficence, fear and silence. The applicable modalities consist of imperialism, scale, gender, bureaucracy and technocracy. How a tyranny may be prevented, by contrast, addresses constitutionalism and contestation.

Each of these elements individually and collectively play roles in creating, sustaining and, at times, ending a tyranny. Choosing a taxonomy over a definition ensures variations within historical contexts, and variety amongst governance orders does not occlude the characteristics of tyranny present within them. A taxonomy enables specific contexts, including the international, to be accounted for without losing sight of the possibilities of tyranny. A taxonomy enables debate over the elements of tyranny and how they contribute to creating a tyrannical order, rather than fixating on whether this or that system is or a particular moment is tyrannical. Rather than asking whether a situation meets an exact definition, the taxonomy allows for the relationship between law and tyranny's component parts to be debated. The taxonomy is not complete nor true for all time. There are other specifics not covered here, including cults of personality or the role of extreme poverty. This book is not intended to end attempts to wrestle with tyranny but rather to begin a discussion.

A taxonomy is more likely than a definition to elucidate a governance form that morphs according to the context in which it operates. Taxonomies define, describe and name things. As part of the process, the interactions, similarities and differences within and against other types are characterised and the internal and external workings explained. A taxonomy of characteristics enables those looking to identify a thing to see the operation of those characteristics in their context. Social science taxonomies are not embedded in theoretical legal discourse but they have been employed across a variety of legal subjects.<sup>10</sup> Taxonomies facilitate

<sup>10</sup> K B Smith, 'Typologies, Taxonomies, and the Benefits of Policy Classification' (2002) 30 *Policy Studies Journal* 379; S P Turner, V Witter Turner, R A Factor, *Max Weber: The Lawyer as Social Thinker* (Taylor & Francis, 1994); L Fox O'Mahony, N Cobb, 'Taxonomies of Squatting: Unlawful Occupation in a New Legal Order' (2008) 71 *Modern Law Review* 878; E Grabham, 'Taxonomies of Inequality: Lawyers, Maps, and the Challenge of Hybridity' (2006) 15 *Social & Legal Studies* 5; G Samuel, 'English Private Law: Old and New Thinking in the Taxonomical Debate' (2004) 24 *Oxford Journal of Legal Studies* 335.

the analysis of the relationships between the elements which make up a concept, putting the idea's complexity centre stage. There are disadvantages: taxonomies can be descriptive and prescriptive; may cause reification, calcification; may become unmanageable and become lost in their internal logic.<sup>11</sup> Taxonomies nonetheless enable structured debate while allowing permutations without requiring events to meet a definition.

The two case studies illustrate the possibilities of tyrannical governance where it can emerge and subsist and the variations it takes within international law. The first of these studies addresses UN Security Council responses to terrorism. This chapter focuses on the responses of a critical part of the global legal order to demonstrate how a single powerful structure can operate within the remit of potential tyranny. Here the geographical concept of scale frames tyranny. Scale, both as a component of tyranny and as an independent theory of governance, offers a means to consider how the international legal order operates beyond the traditional inter-state form. The second case study considers international economic law and specifically its dealings with the Global South. It considers whether this broad swathe of international law, from its historic evolution, responses to reforms and contemporary operation, may possess tyrannical form. Imperialism is used in this chapter in a similar manner to scale. Imperialism is both a facet of tyranny and a governance form in its own right and one familiar to international law. Here it provides a path to consider how tyranny may be entrenched within a legal order. The book demonstrates that while there may be no maniacal presence wallowing in wealth and pleasure at the heart of international law and that for all the benefits emerging from both case studies, tyrannical governance may nonetheless exist in more subtle and ubiquitous forms than international lawyers realise. Such a conclusion should lead to the question of whether tyrannicide is necessary.

This approach to tyranny is far from exceptional in domestic governance debates. During the Federalist debates, both sides queried the possibilities of tyranny seeping into the political and legal structures and proposed strategies to curtail its development. They looked to the work of earlier authors such as Montesquieu, William of Ockham and the Classical period. The Federalists, just as those who had gone before, recognised that tyranny can come from a majority or minority, from a benevolent base and have lofty legal ideals, but once installed these

<sup>11</sup> K D Bailey, *Typologies and Taxonomies: An Introduction to Classification Techniques* (Sage, 1994) 11–14.