

ON TYRANNY AND THE GLOBAL LEGAL ORDER

Since classical antiquity, debates about tyranny, tyrannicide and preventing tyranny's re-emergence have permeated governance discourse. Yet within the literature on the global legal order, tyranny is missing. This book creates a taxonomy of tyranny and poses the question: Could the global legal order be tyrannical? This taxonomy examines the benefits attached to tyrannical governance for the tyrant, considers how illegitimacy and fear establish tyranny, and asks how rule by law, silence and beneficence aid in governing a tyranny. It outlines the modalities of tyranny: scale, imperialism, gender and bureaucracy. Where it is determined that a tyranny exists, the book examines the extent of the right and duty to effect tyrannicide. As the global legal order gathers ever more power to itself, it becomes imperative to ask whether tyranny lurks at the global scale.

AOIFE O'DONOGHUE is Professor of International Law and Global Governance at Durham University Law School, UK. She publishes extensively on topics such as utopias and global constitutionalism, tyranny, feminism, and the use of force alongside international legal history and theory, including her monograph *Constitutionalism in Global Constitutionalisation* (2014). She co-led the UN Gender Network, the highly successful Northern/Ireland Feminist Judgments Project; and Performing Identities, a project focusing on Brexit and Northern Ireland. She frequently comments in the media on the impact of Brexit on Ireland and has undertaken extensively consultancy work for statutory human rights bodies.



GLOBAL LAW SERIES

The series provides unique perspectives on the way globalisation is radically altering the study, discipline and practice of law. Featuring innovative books in this growing field, the series explores those bodies of law which are becoming global in their application, and the newly emerging interdependency and interaction of different legal systems. It covers all major branches of the law and includes work on legal theory, history and the methodology of legal practice and jurisprudence under conditions of globalisation. Offering a major platform on global law, these books provide essential reading for students and scholars of comparative, international and transpational law.

Series Editors

M. E. A. Goodwin
Tilburg University
Randall Lesaffer
Tilburg University
David Nelken
King's College London
Han Somsen
Tilburg University

Books in the Series

Intimations of Global Law Neil Walker

Legalized Families in the Era of Bordered Globalization
Daphna Hacker

Transnational Sustainability Laws
Phillip Paiement

The Sociology of Law and the Global Transformation of Democracy Chris Thornhill

Authority and the Globalisation of Inclusion and Exclusion Hans Lindahl

The Law of the List: UN Counterterrorism Sanctions and the Politics of Global Security Law Gavin Sullivan

> Property Law in a Globalizing World Amnon Lehavi

Democratic Crisis and Global Constitutional Law Christopher Thornhill On Tyranny and the Global Legal Order

Aoife O'Donoghue



ON TYRANNY AND THE GLOBAL LEGAL ORDER

AOIFE O'DONOGHUE

Durham Law School





CAMBRIDGEUNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom One Liberty Plaza, 20th Floor, New York, NY 10006, USA 477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India 103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781108498845 DOI: 10.1017/9781108689434

© Aoife O'Donoghue 2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data Names: O'Donoghue, Aoife, 1981– author.

Title: On tyranny and the global legal order / Aoife O'Donoghue, Durham Law School.

Description: Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2021. |

Series: Global law series | Includes bibliographical references and index. | Contents: Introduction –

History of tyranny – Taxonomy of tyranny – Tyrannicide, tyrannophobia and tyrannophilia –

Scale, tyranny and the global legal order – Imperialism, tyranny and the global legal

order – Conclusion: tyranny and the global legal order.

Identifiers: LCCN 2021029115 (print) | LCCN 2021029116 (ebook) | ISBN 9781108498845 (hardback) | ISBN 9781108689434 (epub)

Subjects: LCSH: International law and human rights. | Dictatorship-Philosophy.

Classification: LCC KZ1266.036 2021 (print) | LCC KZ1266 (ebook) | DDC 342/.041-dc23

LC record available at https://lccn.loc.gov/2021029115

LC ebook record available at https://lccn.loc.gov/2021029116

ISBN 978-1-108-49884-5 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



To Aoibhlínn and Méalla



> "I die, I die!" the Mother said, "My children die for lack of bread. What more has the merciless Tyrant said?" The Monk sat down on the stony bed. The blood red ran from the Grey Monk's side, His hands and feet were wounded wide, His body bent, his arms and knees Like to the roots of ancient trees. His eye was dry; no tear could flow: A hollow groan first spoke his woe. He trembled and shudder'd upon the bed; At length with a feeble cry he said: "When God commanded this hand to write In the studious hours of deep midnight, He told me the writing I wrote should prove The bane of all that on Earth I lov'd. My Brother starv'd between two walls, His Children's cry my soul appalls; I mock'd at the rack and griding chain, My bent body mocks their torturing pain. Thy father drew his sword in the North, With his thousands strong he marched forth; Thy Brother has arm'd himself in steel To avenge the wrongs thy Children feel. But vain the Sword and vain the Bow, They never can work War's overthrow. The Hermit's prayer and the Widow's tear Alone can free the World from fear. For a Tear is an intellectual thing, And a Sigh is the sword of an Angel King, And the bitter groan of the Martyr's woe Is an arrow from the Almighty's bow. The hand of Vengeance found the bed To which the Purple Tyrant fled; The iron hand crush'd the Tyrant's head And became a Tyrant in his stead."

William Blake, The Grey Monk (1801/03)



CONTENTS

	Acknowledgements ix	
	Introduction 1 Tyranny 3 Tyranny and International Law 5 Structure 7 Method 8	
	Tyranny's Bedfellows 11 Why Tyranny? 15	
1	A History of Tyranny 17 Classical Tyranny 18 Medieval Europe 27 Early Modern Constitutionalism and Tyranny 36 The Constitutionalists and Modern Tyranny 61 Tyranny and the Twentieth Century 69 Conclusion 81	
2	A Taxonomy of Tyranny 83 Introduction 83 Why Be a Tyrant? 84 How Tyranny Is Established 88 How Are Tyrannies Ruled? 93 Tyrannical Modes 101 Prevention 112 The Taxonomy 115	
3	Tyrannicide, Tyrannophobia and Tyrannophilia A History of Tyrannicide 118 Tyrannophobia 134 'The Philotyrannicial Intellectual' or Tyrannophilia 137 Conclusion: Tyrannicide and Tyrannophobia and Philos	117
	Conclusion. Tyrannicide and Tyrannophobia and Pinios	142



viii		CONTENTS	
	4	Scale, Tyranny and the Global Legal Order 145 Introduction 145	
		Scale 146	
		Scale and Tyranny 153	
		Scale, Tyranny and the Global Legal Order 162	
		The UN Security Council, Scale and Counterterrorism 168	
		Conclusion: Tyranny, Scale and International Law 180	
	5	Imperialism, Tyranny and the Global Legal Order	182
		Imperialism 182	
		Imperialism and Tyranny 184	
		Global Legal Order and Imperialism 193	
		Tyranny, Imperialism and International Economic Law 203	
		Conclusion: International Economic Law and Tyranny 215	
		Conclusion: Tyranny and the Global Legal Order	217
		Bibliography 223	
		Index 251	



ACKNOWLEDGEMENTS

I began thinking about tyranny during a Hannah Arendt reading group. Organised by Divya P Tolia-Kelly and Andrew Telford, the group was an excellent, open discursive space and my thanks to all the other participants. Ruth Houghton, via a workshop on scale supported by Durham's Institute for Advanced Study, introduced me to the concept. Beyond scale, Ruth is an excellent source of support, critique and mutual mithering about law and academia. She read and listened to my many variations on tyranny and is always full of ideas and questions. She is an excellent colleague, academic and friend. On scale, Phil Steinberg and Joe Painter are always helpful when plagued by my geography queries. Thanks to all at Durham Law School. Thanks to Henry Jones for reading chapters, being a great international law colleague and friend, and showing how thinking about international law differently is always worthwhile. Thanks to Roger Masterman, who tolerates my never-ending commentary on English public law and tyranny. To Robert Schütze, who kindly read a good proportion of the manuscript and supported the early evolution of my ideas. Thanks to Benedict Douglas for pointing me towards excellent reading. Thanks to Adam Rowe for delving through many Security Council Reports. Thanks to Alan Greene; our shared interest in Rome, dictatorship, emergencies and tyranny led to an excellent workshop coorganised with Ruth Houghton in 2018. Ntina Tzouvala is always giving with her time and pushes me to think harder about the implications of my ideas. It is much appreciated. Thanks to Tom Frost, who read the book twice! Thanks to Clare McGlynn, whose constant support, mentorship and friendship steers me in the right direction. Thanks always to Andy Hayward; his friendship is a constant and my academic life would be a lot lesser without him.

Since 2014, I gave many papers on tyranny, at Leicester Law School, at Newcastle Law School, at the University College London (UCL) International Relations unit, at Queen Mary Law School, at Liverpool Law School and at the University of Rome Tor Vergata. Thanks to



X ACKNOWLEDGEMENTS

Claudio Corradetti for the Rome workshop. At each of these workshops colleagues were generous in their thoughts, their critiques and their support.

My own and the broader world has changed since I began thinking about tyranny. Thanks to Finola O'Sullivan at Cambridge University Press, for always understanding when new children and Brexit research stalled my progress. More time helped the finished product, and Finola showed no irritation when the inevitable email came to say there would be delays. Finishing the book in 2020 is a different academic experience. Covid-19 meant homeschooling, getting to grips with phonics, worrying about friends and family and a very different academic working environment. Friends and family were essential to coming through these months. Máiréad, Tara, Fiona, Sinead, Deirdre, Illan and Bríd, thanks for the virtual pub, it is essential to keeping going! Thanks to all my family in Ireland, my parents Jim and Monica, and all the siblings, siblings-in-law and many handsome nephews, Odhran, John, Léan and Martin, Cian, Fionn, Niamh, Brendan, Eoghan, Seán, Conor, Gráinne and Cormac.

Colin shares a Covid home office and more importantly a life with me; he is always brilliant. Reading, listening and discussing ideas, he is always supportive, encouraging and fun about academia and about life. He is also the best co-parent a person could hope to have.

Aoibhlínn and Méalla, you are a joy!