

The Sublime Codes of *Manu*: Law and Eighteenth Century Orientalism

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A. Introduction

The first disquisition given to the concept of the sublime, written by the anonymous Greek Pseudo-Longinus, famously mourns the passing of the pagan relationship between gods and men.¹ In his essay on the work of Pseudo-Longinus, the French poet Michel Deguy states that “the question of the sublime was doubtless first of all an attempt to measure the decline of the Orient, to measure the author’s distance from the time of gods and heroes.”² For Deguy, the Longinian tradition of emphasising the sublime as a key feature of rhetoric must be regarded as an attempt to establish some hope of a truly exalted discourse at a time in which man moves further and further away from his sacred relationship to the highest of origins. Such nostalgia obviously colours every cycle of secularisation; from paganism to Christianity to modernity and beyond. If each period of secularisation generates a more worldly state of affairs, or flatter discourses, it also produces a Longinian longing for a more vertical axis to explain our mortality.

This article addresses one such Longinian moment as it arises at a particular moment in the history of law. More specifically, it examines the work of Sir William Jones, a high court judge of the *puisne* courts in Calcutta during the latter decades of the eighteenth century, whose translations of the Hindu codes of law were both an attempt to understand those laws as they cohered the relevant section of Indian society and an attempt to infuse the common law with the same spirit of the sublime he discerned in the writings and reception of Hindu law. What will be

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¹ Pseudo-Longinus, *Of the Sublime*, <http://classicpersuasion.org/pw/longinus/>.

² Michel Deguy, *The Discourse of Exaltation*, in *OF THE SUBLIME: PRESENCE IN QUESTION* 6 (Jeffrey Librett ed., 1993).

argued is that for Jones, the category of the sublime is not simply nostalgia for a period of natural justice, but instead it has to be understood first as a means of sublimating, containing and controlling what was perceived to be the excesses of the Orient. In this sense the understanding of the mystical aspects of Hinduism might be seen as an essential aspect of the Orientalist project uncovered so critically by Edward Said.³ Second, the concentrated focus on the Oriental sublime was symptomatic of, and uncovers, a more general juridical approach to questions of legal subjectivity. It is at this level that we might begin to comprehend why the category of the sublime seems to be locked into every generation of secularism.

B. Jones and Oriental Scholarship

Before turning to Jones's specific projects that relate to law, it is worth setting down a few contextual remarks about scholarship on India during the eighteenth century when a significant portion the sub-continent fell under the administration of the East India Company. Under the administration of William Hastings in the eighteenth century, scholars such as Charles Wilkins and Nathaniel Halhed initiated studies into the Indian past. Having established the first printing press in India, Halhed published his *Grammar of the Bengali Language*, and Wilkins published the first translation of the *Bagavad Gita*. Ostensibly, such works were issued both to inform Englishmen interested in India and to "conciliate the affection of the natives."⁴ But there was more to these works and the desire for exotic knowledge betrayed a deeper obsession with India that centred around the remoteness and sublime nature of its antiquity and the origins of its culture, religion, and law. Orientalist scholars, spurred on by such discoveries as the ancient cave temples of Elephanta, turned to the East in an attempt to calculate the origins of *all* culture. The caves of Elephanta, for example, were not simply dark, mysterious and terrifyingly colossal. Their sublimity also resided in the suspicion that their antiquity was thought to pre-date any known culture. The implication was that somewhere in the East existed the cradle of civilization and that the clues as to its precise location were to be found in ancient Sanskrit texts.⁵ Contained in this literature, was a history that went back further in time than Christianity or, even, the immemorial origins of English Common law!

"I, who cannot help believing the Divinity of the Messiah, from the undisputed antiquity and manifest completion of many prophecies, especially those of Isiah,

³ EDWARD SAID, *ORIENTALISM; WESTERN CONCEPTS OF THE ORIENT* (1995).

⁴ NATHANIEL HALHED, *A CODE OF GENTOO LAWS, OR THE ORDINATIONS OF THE PUNDITS*, at ix (1776).

⁵ JOHN DREW, *INDIA AND THE ROMANTIC IMAGINATION* 199 (1998).

am obliged of course to believe the sanctity of the venerable books to which that sacred person refers as genuine (the books of Moses); but it is not the truth of our national religion, as such, that I have at heart – it is truth itself; and if any cool unbiased reasoner will clearly convince me that Moses drew his narrative, through Egyptian conduits, from primeval fountains of Indian literature, I shall esteem him as a friend for having weeded my mind from a capital error, and promise to stand among the foremost in assisting to circulate the truth which he has ascertained. . . . I am persuaded that a connexion subsisted between the old idolatrous nations of Egypt, India, Greece and Italy.”⁶

Nature and the antiquity of the Orient are simply two forms of excess that excited the Orientalist scholar. As Voltaire suggested, the Brahmin had “sublime ideas” about the supreme being and the peculiar theocracy of Hinduism prompted Orientalist speculation on the sublime location of divine power.⁷

These appropriately disparate forms of the sublime stimulated the work of the Welshman Sir William Jones, who was regarded perhaps as the most obsessed of all early scholars and about whom a few biographical points are apposite. Details about the life of William Jones (c.1746-94) suggest that his was one almost completely devoted to Eastern scholarship.⁸ His biographers never fail to repeat that, even before traveling to East, he had published his *Grammar of the Persian Language* (1771)⁹ and *Poems, consisting chiefly of Translations from the Arabic Languages* (1772).¹⁰ Any residual scholarly commitments outside this exotic field were dedicated only to the more mundane study and practice of law as a judge on the Welsh circuits.¹¹ Even so, it was the recognition of Jones’ talents as an Orientalist by Warren Hastings which earned him an appointment as a *puisne* judge in the presidency of Bengal.

⁶ William Jones, *On the Divine Inspiration of the Jewish Scriptures*, in MEMOIRS OF THE LIFE, WRITINGS AND CORRESPONDENCE OF SIR WILLIAM JONES 280-281 (John Shore (Lord Teighnmouth) ed., 1804). See also, 3 William Jones, *Ninth Discourse on the Origin and Families of Nations*, 1792, in THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES 176. It is interesting to note the range of 18th century English works suggesting the influence of Brahminism on ancient religious life in Britain. For a discussion see DREW, *supra* note 5, at 50-51.

⁷ VOLTAIRE, COLLECTED WORKS (John Lane at the Bodley Head ed., 1926).

⁸ MICHAEL J. FRANKLIN, SIR WILLIAM JONES (1995).

⁹ WILLIAM JONES, GRAMMAR OF THE PERSIAN LANGUAGE (1771).

¹⁰ WILLIAM JONES, POEMS, CONSISTING CHIEFLY OF TRANSLATIONS FROM THE ARABIC LANGUAGES (1772).

¹¹ FRANKLIN, *supra* note 8. Franklin does suggest, however, that William Jones may have also initiated the society of the “Druids of Cardigan.”

In Calcutta, the judge, devoted much of his time to the study of various Oriental cultures; stating that “my daily studies are now, what they will be for six years to come, Persian and law, and whatever relates to India.”¹² Such studies elicited a sense of pleasure that often seemed to border on the sublime and is expressed in hymn-like prose: “as the thirsty antelope runs to a pool of sweet water, so I thirsted for all kinds of knowledge, which was sweet as nectar.”¹³ Again, the pleasure of Orientalist study is sometimes expressed as “infinite pleasure:” “If envy can exist with an anxious wish of all possible entertainment and reputation to the person envied, I am not free from that passion, when I think of the infinite pleasure which you must receive from a subject so new and interesting [as Sanskrit]. Happy should I be to follow you in the same track.”¹⁴ Even the justification for his studies was Orientalised, and his scholarly appetite was determined by, and surrendered to, a more despotic cause: “the *Mahomedans* have not only the permission, but the positive command, of their law-giver, to search for learning even in the remotest parts of the globe.”¹⁵ However, this compulsive obsession, with studying as many things Oriental as he could, commanded a certain price: “I do not expect, as long as I stay in India, to be free from a bad digestion, the *morbus literatorum*, for which there is hardly any remedy, but abstinence from too much food, literary and culinary.”¹⁶ Jones, incidentally, was to die in Calcutta from an inflammation of the liver.

In addition to his judicial tasks, Jones founded the Asiatic Society of Bengal in 1784. Modeled on the Royal Society, its aims were to “furnish proof to our posterity, that the acquisition of [Indian wealth] did not absorb [our] attention, and that the English laws and English government, in those distant regions, have sometimes been administered by men of extensive capacity, erudition and application.”¹⁷ Jones himself, the gentleman scholar-administrator, undertook full scale studies in the history, religions, customs, manners, geography, chronology, zodiac, mystical poetry and pastoral drama of India,¹⁸ and is recognised as having founded modern

¹² 1 WILLIAM JONES, THE LETTERS OF SIR WILLIAM JONES 362 (Garland Cannon ed., 1970) (Letter to Viscount Althrop); *Id.* at 449 (stating “By rising before the sun, I allot an hour every day to Sanscrit, and am charmed with knowing so beautiful a sister of Latin and Greek” in a Letter to John Macpherson).

¹³ 1 JONES, *supra* note 12, at 464 (Letter to Earl Spencer). The lines are infact Jones’s translation of a stanza from a Sanskrit poem.

¹⁴ 1 JONES, *supra* note 12, at 391 (Letter to Charles Wilkins).

¹⁵ 1 WILLIAM JONES, *Second Anniversary Discourse*, in ASIATIC RESEARCHES 22 (1784).

¹⁶ 1 JONES, *supra* note 12, at 382 (Letter to Patrick Russel).

¹⁷ 1 WILLIAM JONES, *Presidential Address*, in ASIATIC RESEARCHES 221 (1784).

¹⁸ For a fuller overview of the range of Jones’s research interests, see FRANKLIN, *supra* note 8.

philology.¹⁹ He assiduously gathered a portfolio of icons, drawing images of Hindu Gods and symbols that would later haunt the gothic imagination of those such as Thomas de Quincey.²⁰ Broad and eclectic though his research was, its determining influence on imperial manners should not be underestimated. It shored up respect for a fundamentally inaccessible set of cultures, and informed policy on the treatment of Muslims and Hindus. Yet, such an obsessive and zodiacal inquiry, in order, at least, to be in touch with all forms of Oriental knowledge, betrayed a desire to accumulate a different type of wealth to that sustained by officials of the East India Company. It may be that, as Edward Said has already argued; early Orientalism laid down a cultural foundation that enabled the establishment of colonial power. Information was to be managed so as to be understood and controlled. Yet, it ought to be remembered that the acquisition of knowledge was always already implicit in the idea of imperialism. In classical terms, the colonised world was to be understood as that which had “fallen under inquiry” and the antecedents of Roman law implied the empire to be a source of knowledge.²¹

It is obvious, then, that the study of the Orient was a source of pleasure. Yet, a distinction has to be drawn between the pleasure of study and the affective quality of the object studied. For Jones, like the other Orientalists, India was the source of the sublime. But this claim, repeated in the following passage which employs images and expressions of the sublime, follows a trajectory which runs from a state of being attracted to the Oriental sublime, to a state where that sublime is somehow contained and articulated:

“When I was at sea last August, on my voyage to this country, which I had long and ardently desired to visit, I found one evening, on inspecting the observations of the day, that India lay before us, and Persia on our left, while a breeze from Arabia blew nearly on our stern. A situation so pleasing in itself, and to me so new, could not fail to awaken a train of reflections in a mind, which had clearly been accustomed to contemplate with delight the eventful histories and agreeable fictions of this eastern world. It gives me inexpressible pleasure to find myself in the midst of so noble an amphitheatre, almost encircled by the vast regions of Asia, which has ever been esteemed the nurse of sciences, the inventress of delightful and useful arts, the scene of glorious actions, fertile in the productions of human genius, abounding in natural wonders and infinitely diversified in the forms of religion and

¹⁹ On Jones’s contribution to philology, see GARLAND CANNON, *THE LIFE AND MIND OF ORIENTAL JONES: SIR WILLIAM JONES FATHER OF MODERN LINGUISTICS* (1991).

²⁰ THOMAS DE QUINCEY, *SPECULATIONS LITERARY AND PHILOSOPHIC* 236 (1862).

²¹ ANTHONY PAGDEN, *LORDS OF ALL THE WORLD: IDEOLOGIES OF EMPIRE IN SPAIN, BRITAIN AND FRANCE, C.1500-C.1800*, at 19 (1998) (citing Polybius).

government, in the laws, manners, customs, and languages, as well as the features and complexions of men. I could not help remarking, how important and extensive a field was yet unexplored, and how many solid advantages unimproved, and when I considered, with pain, that in this fluctuating imperfect, and limited conditions of life, such inquiries and improvements could only be made through the united efforts of many, who are not easily brought, without some pressing inducement or strong impulse, to converge in a common point, I consoled myself with a hope, founded on opinions, which it might have the appearance of flattery to mention, that if in any country or community, such an union could be effected, it was among my countrymen in Bengal, with some of whom I already had, and with most desirous of having, the pleasure of being intimately acquainted."²²

The phrases and metaphors used by Jones consciously engage with the themes of romantic sublime. The "inexpressible pleasure" in the face of unexplored territories directly transferred onto the Orient, Burkean ideas of ignorance inciting the sublime passions. Typical of romantic sensibilities, the sublime Orient is expressed through the feminised descriptions of Asia: "nurse of the sciences, inventress of the delightful arts," and directs our attention to the formlessness and excesses of femininity described in the last chapter. Elsewhere, Jones is more explicit and suggests that "[the mythology of] the Hindus and Arabs are perfectly original; and to my taste their compositions are sublime,"²³ for, the Indians are those "who receive the first light of the rising sun."²⁴ That the study of the Orient produced such an "infinite pleasure" was due not to the nature of study *as* study, but to the nature of the object of those studies. What is interesting about the above passage, however, is that there is a shift away from the feminine and unexplored sublime to the more mundane descriptions of a society of acquaintances. "Inexpressible pleasure" turns into expressible pleasure as Jones seeks artistic reward by means of sublimation. The hidden, undiscovered and excessive forms of the East provided the initial motor propelling "the delightful and glorious arts" and became the condition of the tamer pleasures of societal research, and of mastery through knowledge. This trajectory alerts us to the Orientalist agenda of converting the excess of the sublime into something more manageable and governable.

This simultaneous attraction to and utilisation of the sublime can be traced throughout all of the disciplines that form objects of Orientalist study. The

²² 3 WILLIAM JONES, *A Discourse on the Institution of a Society, for Inquiring into the History, Civil and Natural, the Antiquities, Arts, Sciences, Literature of Asia, by the President, 1784*, in *THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES*, *supra* note 6, at 2.

²³ 1 JONES, *supra* note 12, at 445 (Letter to Robert Orme).

²⁴ 1 WILLIAM JONES, *Third Anniversary Discourse*, in *ASIATIC RESEARCHES* 41 (1784).

architectural ruins of India, for example, were a key motif in the sublime imagination. One of the key Company artists of the time, William Hodge excelled in depicting the supernatural atmosphere of India so that both mundane and exotic aspects, e.g. the terror of *suti*, are set in front of gloomy architectural ruins.²⁵ In the words of Jones, relentlessly pursuing connections:

“the remains of architecture and sculpture in India, which I mention here as mere monuments in antiquity, not as specimens of ancient art, seem to prove an early connection between this country and Africa; the pyramids of Egypt, the colossal statues described by PAUSANIAS and others.”²⁶

Indeed, India itself was characterised as the ruins of ancient and sublime civilizations and a common argument in contemporary literature was that the Indian civilizations had been ruined by Moghul mismanagement.²⁷ Yet, the architectural remains, and the ruin of India, were an excuse to dominate and rebuild the land. The suspicion that the Oriental ruler embodied a limitless capacity of enjoyment, coupled with the unpredictable nature of alien manners, provoked the need to reconstitute a sense of order fashioned according to prim European standards.²⁸ It was by controlling the mysterious sublime of the Orient that colonialism was to pave the way for a strategy of rule based on the management of pleasures. In this sense, colonialism may be characterised as the attempt to dominate, control and assimilate the dangerous excesses of enjoyment illustrated in the last chapter.

The use of the Oriental sublime can be traced in Jones’s own compositions and receives striking exemplification in Jones’s *Hymn to Ganges*.²⁹ Here, Jones locates the British within the sublime time of ancient Indian history. British imperialism is characterised as inevitable and as part of India’s destiny. As prophesied by a mythological Brahmin, the British would arrive in India in order to rule by “good laws well administered.” Again, in the *Ode to the Surya*, Jones composes a mythical scene that employs all the common-places of the romantic sublime (the obstructed caves, the pure fountains, the obscure paths). What is prophesied on this occasion is the arrival of Jones himself.

²⁵ WILLIAM HODGES, *TRAVELS IN INDIA DURING THE YEARS 1780, 1781, 1782 AND 1783* (1794).

²⁶ 1 JONES, *supra* note 13 at 221.

²⁷ See MICHAEL EDWARDS, *BRITISH INDIA 1772-1947* (1999) (for an overview of this argument generally).

²⁸ See PIYEL HALDAR, *LAW, ORIENTALISM AND POSTCOLONIALISM* (2007) (for further analysis).

²⁹ 6 WILLIAM JONES, *Hymn to Ganges*, in *THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES*, *supra* at 383. See TEJASWINI NIRANJANA, *SITING TRANSLATION: HISTORY, POSTSTRUCTURALISM, AND THE COLONIAL CONTEXT* 19 (1992) (for a different analysis of the *Hymn to Ganges*).

“From the bosom of your silver isle,
Where skies more softly smile,
He came; and, lisp[ing] our celestial tongue,
Though not from *Brahma* sprung,
Draws Orient knowledge from its fountains pure,
Through caves obstructed long, and paths too long obscure.”³⁰

In this ode, Jones submits himself to a sublime landscape that is larger than he, and he is a mere recipient of a language that pre-exists his own existence. Yet it is precisely his status as a foreigner that allows him to be the gift bearer, to return to the Indians what was theirs in any case.

Put simply, the sublime provided the pivot around which both romantic speculation and imperial mastery revolved. This irresolute attitude towards the sublime was expressed time and again over different fields. Jones’s position was not unique, and poets and philosophers were drawn to the East in search of romantic inspiration and those elements that lent themselves to sublime feelings.³¹ Yet at the same time as submitting to it, this aspect of Orientalism, this process of sublimating the excess, yielded and mythologised British authority and was crucial to the control and management of the East and its potential subjects.

C. The Sublime Origins and Force of the Law

I. *Menu Sat Reclined, with His Attention Fixed on One Object, the Supreme God; When the Divine Sages Approached Him*³²

The colonisation of the Oriental sublime must be understood, above all, as a symptom of jurisprudential thought. Sublimation is, after all, the transference, or re-assignment, of excess enjoyment, into something more socially acceptable, and so it operates as a form of prohibition. Given this, it is not surprising to find the same jurisprudential concerns centred around William Jones’s projects to translate

³⁰ 6 WILLIAM JONES, *Ode to Surya*, in THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES, at 383.

³¹ In the field of literature obvious examples would include Byron, Shelley, Moore and Coleridge. In philosophy, the most notable and direct influence of the Indian sublime is evident in the works of Goethe, Herder and Schlegel. See Andrew Rudd, *Romantic Period Writing and India*, in 1 LITERATURE COMPASS 1, at 1-5 (2004) (for further commentary on these authors).

³² 2 WILLIAM JONES, *Preface to the Institutes of Hindu Law; or the Ordinances of Menu according to the Gloss of Culluca comprising the Indian System of Duties, Religious and Civil*, in THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES, at 91.

Hindu laws. Just as he found “infinite pleasure” in the study of Sanskrit and Hindu mythology, so to the study of Indian laws became an equally romantic past-time. “Do you not agree” he wrote to Schultens as early as 1774, “that nothing should be more pleasant or noble than the study of native and universal law?”³³ Yet again, it was the object of study itself that satisfied the romantic desire for, and submission to the sublime. As Jones observed “a spirit of sublime devotion . . . pervades the whole work [of Hindu law].”³⁴ On a more mundane level, however, these translations differed significantly from others such as his translation of Kalidasa’s plays. In being directly applicable, this was a form of Orientalism which constituted the text as an object of knowledge while also creating of the “Indian,” a subject of law. The totality of this exercise would have included “six or seven law books believed to be divine with a commentary on each of nearly equal authority; these are analogous to our Littleton and Coke, next Jimut Bahur, the best book on inheritances; and above all a digest of Hindu law in twenty-seven volumes precisely in the manner of the original digest.”³⁵ The project was never completed by Jones in its entirety, although, what survives of that project are the Laws of Manu, translated in 1794 as *The Institutes of Hindu Law: or, the Ordinances of Menu*.³⁶

What was so sublime, to Jones’s mind, about the Hindu laws of Manu, in particular, was that they were revealed and written down rather than composed and invented: “It was not MENU who composed the system of law, by the command of his father BRAHMA, but a holy personage or demi-god, named BHRIGU who revealed to men what MENU had delivered at the request of him and other saints or patriarchs.”³⁷ Menu, or Manu, was not simply the hand, or the amanuensis, he was, as it were, the first hand and the holiest of amanuenses! The law descends, having been promulgated “in the beginning of time by MENU, son of BRAHMA, or, in plain language, the first of created beings, and not the oldest only, but the holiest of legislators.”³⁸ So old are these laws, “the laws [of Menu] are considerably older than those of SOLON or even LYCURGUS,”³⁹ that Jones declares himself to be “lost

³³ 1 JONES, *supra* note 12, at 93 (Letter to Henry Albert Schultens).

³⁴ 2 JONES, *supra* note 32, at 76.

³⁵ 1 JONES, *supra* note 12, at 447 (Letter to C.W. Boughton Rouse).

³⁶ WILLIAM JONES, *THE INSTITUTES OF HINDU LAW; OR THE ORDINANCES OF MENU ACCORDING TO THE GLOSS OF CULLUCA COMPRISING THE INDIAN SYSTEM OF DUTIES, RELIGIOUS AND CIVIL* (1825).

³⁷ 3 WILLIAM JONES, *On the Gods of Greece, Italy and India, 1784*, in *THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES*, at 344.

³⁸ 2 JONES, *supra* note 32, at 76.

³⁹ *Id.* at 78.

in an inextricable labyrinth of imaginary astronomical cycles, *yugas*, *mahayugas*, *calpas*, and *menwantaras*, in attempting to calculate the time when the first MENU, governed this world, and became the progenitor of mankind."⁴⁰

While clearly interesting from an Orientalist point of view, it is unclear why, as a lawyer, Jones would wish to allocate any legal authority, to a high Hindu text such as Manu? A number of reasons, simultaneously practical and ideological, are given by Jones, his contemporaries and modern commentators. It is important to analyse these given reasons in order to reveal the way in which they hang on the idea of the sublime and on the process of sublimation.

*II. A "Best Practicable System of Judicature"*⁴¹

At one level of analysis, the codification of the original texts of Indian laws arranged according to the scientific method simply eased the process of decision making by judges of the Calcutta Supreme Court. Apart from Jones, judges were unwilling to learn Sanskrit and were consequently ignorant of the laws they were applying to Indian subjects. Instead, they had to rely on the written opinion of local lawyers and translations of particular laws were provided only when required.⁴² The inefficiency of this process of discovering and applying Hindu, or Muslim, law was increased due to the lack of trust afforded to the relevant court officials; "pure integrity is hardly to be found among the Pandits and Maulavis."⁴³ Copies of the work enabled British judges to avoid relying on these intermediaries and to detect any misinformation that these pandits and maulavis may have provided in the courts.⁴⁴ In this sense, Jones's attempt to translate the law was symptomatic of the training of all common law lawyers. The process of translating the Hindu and Muslim laws might be regarded as equivalent to that of legal education in the Inns of Courts and simply provided direct access to what was hidden in the depths of an esoteric language. The secular lawyer assumed the mantle of the priest as guardian of a sacred text and of its meaning. Whether written in a foreign tongue or in English, training on legal priesthood was, and remains, necessary in order to

⁴⁰ *Id.* 76-7.

⁴¹ 1 WILLIAM JONES, *Best Practicable System of Judicature*, in THE LETTERS OF SIR WILLIAM JONES 387 (1970) (Letter to Edmund Burke).

⁴² *Id.*

⁴³ 1 JONES, *supra* note 12, at 447 (Letter to CW Boughton Rouse). It is pertinent, in this context, that Boughton Rouse was then secretary to the Board of Control for India.

⁴⁴ 1 JONES, *supra* note 41.

unlock the mysteries of legal knowledge (*arcana juris*).⁴⁵ The hieroglyphic nature of law was regarded as universal. Translation provided the opportunity for the lawyers of the supreme courts to have access to legal wisdom without the intermediation of the pandits and maulavis.

In strict doctrinal terms, however, the idea that a translation of indigenous laws would ease the judicial process of determining rules to be applied somewhat elides a more substantial point. It remains unclear as to why Hindu laws should be used in place of the common law given that in 1608 the English courts had stated firmly that “if a Christian king should conquer the kingdom of an infidel . . . the laws of that kingdom are abrogated”⁴⁶

On this point, a number of reasons were given for keeping intact the laws of the “native” subject. For Nathaniel Halhed, one of the eighteenth century East India Company officials and Orientalist, it was a matter of following the antecedents of Roman imperialism: “[The Romans] not only allowed their foreign subjects the free exercise of their own religion and the administration of their own civil jurisdiction, but sometimes, by a policy still more flattering, even naturalized parts of the mythology of the conquered, as were in any respect compatible with their own system.”⁴⁷ The following reason provided by another official, James Forbes, in his memoirs however, recognised the limits of Imperial authority.

“It is impossible to separate the political tendency of laws from the genius of government from which they emanate. The spirit of the English constitution assigns to the mass of the people an extensive control over the exercise of public authority; and deems the executive government to be the representative of the public will. This spirit pervades the whole body of its laws; these laws necessarily reflect back and reproduce the principles from which they spring; and it is a matter of grave reflection should, that if this species of reaction should ever be produced in India, from that moment it is lost to this country for ever. The efficient protection of our native subjects in all the rights which they themselves consider to be essential to their happiness is certainly the most sacred and Imperious of all our duties. . . . It is not the question, whether the English or the Hindoo code of religion and

⁴⁵ See PETER GOODRICH, *READING THE LAW; A CRITICAL INTRODUCTION TO LEGAL METHOD AND LEGAL TECHNIQUE* (1986).

⁴⁶ PETER GOODRICH, *LANGUAGES OF LAW; FROM LOGICS OF MEMORY TO NOMADIC MASKS* 212 (1990). Quoting from SIR JOHN FORTESQUE, *DE LAUDIBUS LEGUM ANGLICAE* (1773 ed.), Sir John Fortesque remarks “I am convinced that our laws of England eminently excel, beyond the laws of all other countries.” Sir John Fortesque derived this from Calvin’s Case, 7 Coke Report 1a, 77 ER 377 (1608).

⁴⁷ HALHED, *supra* note 4.

jurisprudence be entitled to the preference; but whether the Hindu law and religion . . . are, or are not to be, maintained, or whether we are at liberty to invade both.”⁴⁸

According to Forbes, the “invasion” of Indian law and, its replacement with the common law, did not form part of British Imperialism. As Jones continually emphasised such an agenda would have compromised the spirit of liberty which, was essential to the jurisprudence of the common law. In his recommendations to Edmund Burke for the “Best Practicable System of Judicature,”⁴⁹ Jones observed that the replacement of Indian laws would have entailed a violent imposition of one institution upon another and would have implied that the English assume the despotic attributes of intolerance to which they were necessarily opposed: “A system of *liberty*, forced upon a people invincibly attached to opposite *habits*, would in truth be a system of cruel *tyranny*.”⁵⁰ The *spirit* of liberty implied that the very system and set of institutions on which it depended could not be transferred to, and imposed upon, other cultures. However, the real paradox and irony of this sentiment was that for these Hindu and Muslim subjects, the enjoyment of their own laws had to be sanctioned and determined by a foreign system, a foreign institution, and foreign legislation.

“[A] legislative act [is needed] to assure the Hindu and Musselman subjects of Great Britain, that the private laws, which they severally hold secret and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance.”⁵¹

This rhetoric of liberty, in other words, disguised the constitutional theory that there was *posited* a non-Indian geographical location of authority; the seemingly autonomous survival, existence and application of Indian laws hung upon a set of instructions relayed from London to Calcutta. And, it should not be forgotten that behind this legislative authority, lay an obvious ulterior Imperial motive that involved buying the respect and affection of the Bengalis. These additional and superficial reasons for the preferential use of Hindu and Muslim laws, given by Jones in his letter to Burke, point to mercantile interests and the importance of

⁴⁸ 2 JAMES FORBES, *ORIENTAL MEMOIRS: A NARRATIVE OF SEVENTEEN YEARS RESIDENCE IN INDIA* 317 (1834).

⁴⁹ 1 JONES, *supra* note 41.

⁵⁰ *Id.*

⁵¹ 1 JONES, *supra* note 12, at 485 (Letter to the Marquis of Cornwall).

maintaining good relations between the English (or, in Jones's case, the Welsh) and the subjects of Bengal:

"Any system of *judicature* affecting the natives in *Bengal*, and not having for its basis the old *Mogul* constitution, would be dangerous and impracticable. . . . The natives must have an *effective* tribunal for their protection against the *English*, or the country will soon be rendered *worse than useless* to Britain."

Holding back on the application of the common law, was part of an established code of behaviour that sought to ensure the happiness and respect of "the natives [who] are charmed with the idea of making their slavery lighter by giving them their own laws."⁵² Jones's reification of the spirit of liberty thus masks a motive for maintaining imperial authority through the judicial system: "The Hindus are incapable of civil liberty; few of them have any idea of it; and those who have do not wish it. They must (I deplore the evil, but know the necessity of it) they must be ruled by an absolute power."⁵³

It might be argued further, that the translation of a sacred Hindu text into English ensured the manipulation of that text. Sanskrit texts had their untranslatable words, and contained forms of signification and meaning unthinkable in an English idiom. Indeed, all projects of translation put signification and the status of the original into question. Translation necessitates mistranslation and glosses over the remnants of enigmas and puzzles, which are impossible to solve. Where, to subvert Gayatri Spivak's original argument, did Sanskrit end and English begin?⁵⁴ Translating a legal text into English in order that its rules may be enforced in a court of law simply erases the ability of that text to speak in its own language, in a language other than that of the British court system. Hindu or Mohammedan laws were translated and tailored to fit British conceptions of justice. John Strawson makes the claim in relation to Jones's project of translating the *Al Sirajiyah*. Islamic law, he suggests, was given legitimacy only "by reference to European criteria which are taken almost as fact."⁵⁵ Legal Orientalism thus denied and obscured the diverse literary traditions of both Hindu and Islamic jurisprudence.

⁵² 1 JONES, *supra* note 12, at 558 (Letter to 2nd Earl Spencer). Consider, too, his remark that the "three excellent things, which the ancients feigned to be the daughters of their supreme God, a good system of laws, a just administration of them, and a long peace will render this country a source of infinite advantage to Great Britain." 1 JONES, *supra* note 12, at 397 (Letter to William Pitt the Younger).

⁵³ 1 JONES, *supra* note 12, at 443 (Letter to Patrick Russell).

⁵⁴ Gayatri Chakravorty Spivak, *Translator's Preface*, in JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gayatri Chakravorty Spivak tr., 1976).

⁵⁵ John Strawson, *Islamic Law and English Texts*, 6 *LAW AND CRITIQUE* 21, 33 (1995).

What is at stake, at this (practical/ideological) level of analysis, is the use of the courts and the process of translation to manoeuvre and contain the law. It might be supposed, therefore, that Hindu law, for example, was to be kept as a mark of difference. Nations might be defined according to their laws, and their systems of interdiction, and so a Hindu was to be kept in his place and differentiated according to the law to which he appealed. The Hindus are Hindus by virtue of their laws. Certainly, the point is implied by Forbes in criticising early attempts by the English to abolish the practice of *suti*: "If we are to govern Hindoos by their own laws, why do we tear them up by their roots, they are no longer Hindoos if they are subject to innovation."⁵⁶

III. The Sublime Universality of Laws

But there was more to this process of translation than the control and manipulation of positive laws. For Jones, and here his attitude was symptomatic of contemporary jurisprudential concerns, there was a genuine recognition of the spirit of Hindu law that actually refers him to similarities and connections between eastern and western notions of legality. Or, put slightly differently, the spirit of Hindu law refers to the other face of European legality that Jones and common law lawyers such as Blackstone had been trying to recuperate throughout the eighteenth century. In what seems like a typical piece of apologia, linking a system of laws to the manners and civilization of its people, the following passage introduces Jones's recognition and obsession with the idea of legal sublimity.

"It is a maxim in the science of legislation and government that *laws are of no avail without manners*, or, to explain the sentence more fully, that the best intended legislative provisions would have no beneficial effect even at first unless they were congenial to the disposition and habits, to the religious prejudices, and approved immemorial usages, of the people, for whom they were enacted; especially if that people universally believed that all their ancient usages and established rules of conduct had the sanction of an actual revelation from heaven."⁵⁷

While this idea of antiquity and sublime revelation is a feature of Hindu law, it also resonates with the reflections on the original time and place of the common law that had been rattling around the minds of its own lawyers. It was common for 18th century doctrinalists to use the category of the sublime to describe the complexity, disorder and obscurity of the common law. For Blackstone, in particular, this

⁵⁶ 2 FORBES, *supra* at 318.

⁵⁷ 2 JONES, *supra* note 32, at 75.

irregular form of the law was founded in an idea of nature from which England was to derive the law of the land.⁵⁸ Like the sublime ruins of gothic castles, churches and abbeys, the law was magnificent, venerable, winding, difficult, inspiring and at times neglected. Far from rendering common law defunct, the idea of neglect simply meant that it contained latent, undiscovered perfections. It was because of its sublime nature, that the law was capable of evolving new and beautiful solutions to problems: “my system is formed; and I did not carry it *to* the law, but found it *in* the law.”⁵⁹ A second level of analysis, beyond the practical concerns of authority, has to be considered and, at this level, the focus is on similarity rather than difference. That both Hindu law and common law shared ideas about their beginnings, and celebrated their obscurity in similar ways might seem like a weak comparison, but to Jones, and other Orientalists of the Asiatic society, it implied that both systems may well have emerged from the mists of a common time immemorial, and a common place. It is at this mystical and sublime moment, whose precise time was lost in the labyrinth of astronomical cycles, that Jones saw the familial connection between east and western sources of law; “the Hindus believe [their law] to be almost as old as creation. It is ascribed to MENU, the MINOS of India, and like him, the son of JOVE.”⁶⁰

In this respect, eighteenth century jurisprudential claims that English law was to boost its legitimacy if it “conformed to the norms of a community of legal systems,” have to be remembered.⁶¹ Familial connections were essential to the iconic unity of the English law. As Jones, puts it; “The great system of jurisprudence like that of the Universe, consists of many subordinate systems, all of which are connected by nice links and beautiful dependencies.”⁶² In this sense, correspondences were even sought and found between the laws of Manu and Justinian’s *pandectae*:

“If we had a complete digest of Hindu and Muhammedan laws, after the model of Justinian’s inestimable Pandects, compiled by the most learned of native lawyers, with an accurate verbal translation of it into English; and if copies of the work were repositied in the proper offices . . . of the Supreme Court, that they might

⁵⁸ See generally DANIEL J. BOORSTIN, *THE MYSTERIOUS SCIENCE OF THE LAW: AN ESSAY ON BLACKSTONE’S COMMENTARIES* (1996).

⁵⁹ 1 JONES, *supra* note 12, at 383 (Letter to Earl Spencer).

⁶⁰ 1 JONES, *supra* note 12, at 440 (Letter to Patrick Russell). See also 1 JONES, *supra* note 12, at 464 (Letter to Earl Spencer where Jones describes Menu as “the first created man, many millions of years old.”).

⁶¹ BOORSTIN, *supra* note 58, at p45.

⁶² WILLIAM JONES, *AN ESSAY ON THE LAW OF BAILMENTS* 173 (1998).

occasionally be consulted as a standard of justice, we should rarely be at a loss for principles at least and rules of law applicable to the cases before us. . . . The great work, of which *Justinian* has the credit, consists of texts collected from law-books of approved authority, which in his time were extant at Rome; and those texts are digested according to a scientific analysis; the names of the original authors, and the titles of their several books, being constantly cited with references even to parts of their works, from which the different passages were selected; but although it comprehends the whole system of jurisprudence . . . that vast compilation was published, we are told, in three years; with all its imperfections, it is a most valuable mine of juridical knowledge; it gives law at this hour to the greatest part of Europe; and though few English lawyers dare make such an acknowledgement, it is the true source of nearly all our English laws that are not feudal in origin. It would not be unworthy of a British government to give the natives of these Indian provinces a permanent security for the due administration of justice among them, similar to that which Justinian gave to his Greek and Roman subjects. The labour of the work would also be greatly diminished by two compilations already made in Sanscrit and Arabick, which approach nearly in merit and in method, to the Digest of Justinian. . . . The *Vivadarnava* [*Bridge over the Sea of Litigation*] consists, like the Roman Digest, of authentick texts, with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes taken from commentaries of high authority.”⁶³

Even at the mundane level of individual rules of contract or inheritance, familial connections between the common law and other legal systems had to be sought and found.⁶⁴ As Boorstin, commenting on Blackstone, notes; “the ancient or foreign rule is first used to explain, and then to justify the English institution.” Jones provided the following example:

“That the Hindus were in early ages a *commercial* people, we have many reasons to believe; and in the first of their sacred law-tracts, which they suppose to have been revealed by MENU many *millions* of years ago, we find a curious passage on the legal *interest* of money, and the limited state of it in different cases, with an exception, which the sense of mankind approves, and which commerce absolutely requires, though it was not before the reign of CHARLES I that our own jurisprudence fully admitted it in respect of maritime contracts.”⁶⁵

⁶³ 1 JONES, *supra* note 12, at 485 (Letter to Lord Cornwall).

⁶⁴ BOORSTIN, *supra* note 58, at 44.

⁶⁵ 3 WILLIAM JONES, *Second Anniversary Discourse 1785*, in THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES 42-44.

There was, then, no clear discrimination against this foreign legal order. The word “foreign” simply meant “ancient,” and “ancient” meant the possibility that at some time - beyond the time of memory - Hindu, Roman and common law systems were conjoined, or even identical to one another.

Furthermore, what was to prove beneficial to the Imperial enterprise was that this universal law had universal jurisdiction and applied across the whole human race irrespective of differences. That the Hindu code of laws was comparable to the codes of Roman Law points to the place of the legal text in classical ideas of Imperialism. These comparisons and connections appealed to the policy of the Roman imperialism according to which the essence of legal authority devolved from the textual body of its laws. Similarly, Manu was to take the place of the Pandects as law’s *ur*-text and thus transfer its authority right across the globe. After all: “Legislative provisions have not the individual for their object, but the species; and are not made for the convenience of the day but for the regulation of ages.”⁶⁶ Even in this age of reason, Law was to be considered universal, beyond mere geography, and as deriving from, and revealed by, the gods. For Jones “[Hooker’s] idea of heavenly law is just and noble; and human law as derived from it, must partake of the phrase as far as it is perfectly administered.”⁶⁷

The universality of law, so crucial to the idea of Empire, did not derive from differentiating Western from Eastern jurisprudence. It was, rather, based on their similarities, or at least a similarity in so far as both posited a mysterious and sublime cause at the center of their institutional organization.

IV. *The “Dread Force of Law”*

In the context of Imperialism, the sublimity of Hindu laws, offered the English further advantages. The sublime was connected with power, and control over the sublime would be control over power; “I know of nothing sublime” states Burke, “which is not some modification of power.”⁶⁸ Or, as Jean-Luc Nancy puts it: “In the sublime, enjoyment touches, moves, that is also commands.”⁶⁹ For Burke, and for

⁶⁶ 3 WILLIAM JONES, *Charge to the Grand Jury 1785*, in THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES 3.

⁶⁷ 1 JONES, *supra* note 12, at 516 (Letter to John Shore). The text Jones refers to is “of law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world.” Richard Hooker, *Of the Laws of Ecclesiastical Polity*, in 1 JONES, *supra* note 12, at 835-836.

⁶⁸ EDMUND BURKE, A PHILOSOPHICAL ENQUIRY INTO THE ORIGIN OF OUR IDEAS OF THE SUBLIME AND BEAUTIFUL 69 (1844).

⁶⁹ Jean-Luc Nancy, *The Sublime Offering*, in OF THE SUBLIME: PRESENCE IN QUESTION 52 (Jeffrey Librett ed., 1993).

later romantics such as Jones and Forbes, the sublime was rooted in objects which are obscured from sight; darkness, confusion, ignorance and terror are what excited romantic passions. Just as the dread of night and the fear of ghosts lay in their obscure forms, similarly, the despot was one who exercised his form of justice in private: "Those despotic governments, which are founded on the passions of men, and principally upon the passion of fear, keep their chief as much as may be from the public eye."⁷⁰ It was this inaccessible private domain, a common-place of much gothic fiction, which characterised despotic enjoyment as exclusive, absolute and terrifying.

In dressing up its own pre-history with a mantle of sublimity, in emphasising its obscure origins, it was to be the law that occupied the place of the despotic potentates; it was to be the law that inherited the exercise of power by replacing the "dread majesty"⁷¹ of the Sultans. As Nietzsche later put it, legal authority rests on "the assumption that the rationale of every law is not human in origin, that it was not sought and found after ages of error, but that it is divine in its origin, completely and utterly without a history, a gift, a miracle, a mere communication."⁷² To reveal the origins of law as something positive, as opposed to divine, would be to obviate its imperative tone. Thus: "To draw up a law-book like Manu's, is tantamount to granting to a people mastership for the future, perfection for the future, - the right to aspire to the highest Art of Life. To that end, the law must be made unconscious: this is the object of every holy lie."⁷³

This shift from the denigration of despotic enjoyment to the use of its energies (*pouissance*) in the more socially acceptable form of law can be traced through Jones's own work. On the question of despotic power, he expressed two differing opinions. On the one hand, of course, he stood opposed: "My temperament cannot stomach the arrogance of princes and nobles."⁷⁴ He re-iterated the point again, when comparing press gangs to Oriental tyranny: "Be assured, my dear lord, that while the *illegal* power of pressing subsists, the peasantry are no more free than the

⁷⁰ BURKE, *supra* note 68, at 65.

⁷¹ 3 JONES, *supra* note 66, at 20.

⁷² FREIDRICH NIETZSCHE, *THE ANTI-CHRIST* (Thomas Common, tr., 1930). See Adam Gearey, *The Fourth Book of the Legislator: Nietzsche and John Neville Figgis*, in *NIETZSCHE AND LEGAL THEORY; HALF WRITTEN LAWS* 165-185 (Peter Goodrich & Mariane Valverde eds., 2005) (for a pertinent analysis).

⁷³ *Id.* at 56. See WENDY DONIGER, *THE LAWS OF MANU*, at xv (1991) (for comment).

⁷⁴ 1 JONES, *supra* note 12, at 93 (Letter to Henry Albert Schultens).

people of Constantinople or Morocco. It is only a base mode of exercising cruel tyranny."⁷⁵

Yet, on the other hand, Jones saw in the process of sublimation the chance to convert the excess energy of Oriental forms into something useful. In this light, Jones's comments cited below on the use of the Hindu oath in the English courts, which required witnesses to be sworn by a Brahmin in front of consecrated fire, are important. In his address to the grand jury, Jones emphasised at length why the phrasing of the Hindu oath is so necessarily awful:

"because, though in form it invokes the Supreme Being as a defender, yet by implication it addresses Him as an avenger; and though it openly expresses a benediction, yet it virtually implies imprecation: the expression could not be full, without raising too violent and too painful an image . . . a sublimer idea could not enter the mind of man; since it is a clear deduction of reason, that the bare suspension of the Divine energy but for a moment, would cause the instantaneous dissolution of all worlds, and the tumultuous extinction of all who inhabit them."⁷⁶

It is noteworthy that the figure of punishment invoked by Jones bears the same features of the terrifying gods – the black complexion and the red eyes – which previous travelers had denigrated as idolatrous symbols of polytheistic excess (*see* chapter three). It is an exemplary feature of common law jurisprudence that any such fantasies of excess come to be assimilated and monopolised rather than rejected. Jones was as easily drawn to the idea of an alien deity such as Kali as he was to the sublime powers of despotic excess:

"In general I observe, that the *Hindu* writers have exalted ideas of criminal justice, and in their figurative style, introduce the *person of punishment* with great sublimity: 'Punishment' they say 'with a black complexion and a red eye, inspires terror, but alarms the guilty only;' Punishment guards those who sleep, nourishes the people, secures the state from calamity, and produces the happiest consequences in a country where it is justly inflicted; where unjustly, the magistrate cannot escape censure, nor nation, adversity."⁷⁷

⁷⁵ 1 JONES, *supra* note 12, at 268 (Letter to Viscount Althrop).

⁷⁶ 3 JONES, *supra* note 66, at 20.

⁷⁷ *Id.*

It was, in other words, these once terrifying figures of Oriental excess that was to inform eighteenth century jurisprudence, and provide the law with a theoretical dias from which to instruct.

V. *The Law Givers: Manu, Solon, Tribonian, Jones*

The effect of sublimation thus converted the exclusive enjoyment of the Sultans, and the obscene excesses religious idolatry, into more accepted and useful forms of control. The sublime allows power to emerge and to be posited as legitimate force. However, just as superabundant enjoyment is what distinguished the despot from his subjects, so too sublime power conferred a similar, but more accepted, status on the judge/legislator. The Oriental despot held a particular place as a mediator and messenger of the gods. According to Alain Grossrichard, the despot had to submit to the law because to do so was to endow the law with universal characteristics.⁷⁸ And, simultaneously, because the law was regarded as universal, it empowered him to act and speak imperatively. The law created the despot and the despot created the law. That the despot was simultaneously subject to the law and in a unique position to create the law might be characterised in terms of a split. This being so, it may be argued that this split is what allows the charisma of authority to emerge.

This same split economy of power, and of jurisdiction, is discernable if we analyse Jones's own position in relation to the law. In typical fashion, and throughout his writings, Jones maintained his submission before the law. In a letter to Earl Spencer, he declares his refusal to take sides in the battle between Burke and Hastings in the run-up to the latter's impeachment. His allegiances are only to aspects of the law. Thus he has "an equity-side, a common-law-side, an ecclesiastical side, and an admiralty-side, but I am quadrilateral by act of parliament"⁷⁹ Jones's quadrilateral nature (Janus squared) involves his submission to a higher cause: "it is my sole duty to convey law as though a channel."⁸⁰

Jones's subservient relationship to the law conformed to the correct manners demanded of its institution. Yet, this passive position within the dogmatic structure of the law, assigned Jones to a particular place that distinguished him from those other (pre-) colonial subjects of law over whom he held authority. He was no mere passive recipient of the law, but a messenger and conduit of an already established

⁷⁸ ALAIN GROSSRICHARD, *THE SULTAN'S COURT, EUROPEAN FANTASIES OF THE EAST* 92-93 (Liz Heron tr., 1998).

⁷⁹ 1 JONES, *supra* note 12, at 383 (Letter to Earl Spencer).

⁸⁰ *Id.*

truth. Jones recognised the power conferred upon him over his subjects. It is a power, he freely admitted, that made him tremble: "All the police and judicial power, therefore, of this settlement, where at least half a million of natives reside, are in my hands: I tremble at the power, which I possess."⁸¹

The simultaneity of passivity and authority is more pertinently discernable in relation to the translations of the legal codes. For, here Jones was more than a judge; "I speak the *language of the Gods* as the Brahmens call it, and am engaged in superintending a *Digest* of Indian law for the benefit of *twenty four millions* of black subjects in these provinces."⁸² Jones bestowed upon himself the status of a law-giver and, continually, referred to himself as occupying the same position as that of Solon. Indeed, in the following passage Jones admits to a position that Solon would have envied. "I have the delight of knowing that my studies go hand in hand with my duty, since I now read both Sanscrit and Arabik with so much ease, that the native lawyers can never impose upon the courts, in which I sit. I converse fluently in Arabik with the Maulavi's, in Sanscrit with the Pandit's, and in Persian with the nobles of the country; thus possessing an advantage which neither Pythagoras nor Solon possessed, though they must ardently have wished it."⁸³

Given that the sublimity of law renders it universal, the law giver need not be specifically Greek. The law-giver might take on a number of providential guises. Jones is thus able to describe himself as a reincarnation of Manu himself, who "having written the laws of BRAHMA in a hundred thousand couplets, arranged under *twenty-four* heads in a *thousand* chapters presented them to the primitive world."⁸⁴ What Manu presented to the primitive world, the modern day amanuensis, Jones, was to present to the civilized world of European judges, and governor-generals. Again, in a private letter sent from Calcutta to London in 1786 in which Jones expressed his plans for the systematic translation and compilation of Hindu and Mohameddan laws, Jones likens himself to Tribonian, the compiler of the Justinian code and declares that the mantle of Justinian himself was to fall upon his patron, Lord Cornwallis, the governor-general of Bengal.⁸⁵ Jones's personal pundit or Maulavy, Mujdudden, is given the title *omni exceptione major* (beyond contradiction) taken from Justinian's institutes.⁸⁶

⁸¹ *Id.*

⁸² *Id.*

⁸³ 1 JONES, *supra* note 12, at 483 (Letter to Henry Dundas).

⁸⁴ 2 JONES, *supra* note 32, at 84.

⁸⁵ 1 JONES, *supra* note 12, at 409 (Letter to John Macpherson).

⁸⁶ *Id.*

The category of the sublime thus clears a space to be occupied by a mediating figure. As Pierre Legendre puts it; "In theology, the power of God or absolute place of the mythical Third must always pass through a mediating figure – that of the pope, the emperor or the priest – before it becomes an object of subjective attachment."⁸⁷ Similarly, in Jones's imperial jurisprudence, it is the law-giver – Manu, Solon, Justinian or Jones himself – who was to occupy that charismatic position as mediator between the Gods and his subjects.

VI. The Affect of Subjectivity

In sublimating excess enjoyment, and in rendering a mythological status for himself and for the British, Jones constructed out of the law a domain of affection. Face to face with the terrifying powers of the sublime, the subject has no option but to be dominated and thereby defined. For Jones, the power of the legal sublime found in the Hindu scriptures provides for a replication of Burke's theory at the level of legal subjectivity. The legal sublime renders urgent the question of devotion and belief. Consider his description of Manu. Even though it is "a system of despotism and priestcraft," or perhaps because of this, the Hindu laws of Manu, is imbued with;

"a spirit of sublime devotion, of benevolence to mankind, and of amiable tenderness to all sentient creatures, pervades the whole work; the style of it has a certain austere majesty, that sounds like the language of legislation and exerts a respectful awe; the sentiments of independence on all beings but God, and the harsh admonitions, even to Kings, are truly noble, and the many panegyrics on the Gayatri, the mother, as it is called, of the Vedas, prove the author to have adored . . . that divine and incomparably greater light, to use the words of the most venerable text in the Indian scripture, which illumines all, delights all, from which all proceeds, to which all must return, and which alone can irradiate (not our visual organs merely, but our souls, and) our intellects."⁸⁸

In establishing this affective domain, the sublime is used for the psychoanalytical control and institution of the subject. The terror of the sublime, and the suggestion that laws derive from origins which exceeded perishable man, established the proper emotional attachment to the law. Sublime enjoyment operates around the idea that man is small when he confronts the vastness of nature. It is from this

⁸⁷ PIERRE LEGENDRE & PETER GOODRICH, *LAW AND THE UNCONSCIOUS; A LEGENDRE READER* 262 (Peter Goodrich, Alain Pottage & Anton Schutz trs., 1997).

⁸⁸ 3 William Jones, *Ninth Discourse on the Origin and Families of Nations, 1792*, in *THE WORKS OF SIR WILLIAM JONES IN 13 VOLUMES*, *supra* at 62.

standpoint that the subject is confronted with his own limits. The numerous drawings and paintings made by romantic artists in India recording the microscopic detail of everyday life reflected the concern with the interiority and contours of subjective life. They were also concerned with the way in which subjective life was instituted. As James Beattie observed: "Grammarians are not agreed about the etymology of the word sublime. The most probable is that it may be derived from *supra* and *limus*; and so denotes literally the circumstance of being raised above the slime, the mud, or the mould of this world."⁸⁹

Such a concern for circumscribing subjective life was consciously transferred into the jurisprudential sphere by Jones. The legal subject *per* Jones is not a self defined entity. Rather, as I hope I have argued, subjectivity is to be defined only in relation to the vast sublimity of law. In the context of colonial legality, the translation of the Hindu law codes and the subsequent theorization of the sublimity of law was a key moment in the colonization and cultivation of subjectivity. Faced with the sublimity of Law, the legal subject has no option but to give himself up to it. What we have seen from the numerous (excessive) quotes from Jones's work is a confidence to now talk about the Hindus and Muslims as subjects. The process of sublimating excess enjoyment simultaneously converts the Oriental individual into a subject of law. Such confidence was decidedly born of the translation of the Hindu law as a sublime source of authority.

D. Conclusion

The sublime provides a terrifying yet empty space from which to instruct and colonise the subject. The category of the sublime allows *man* to move away from the feminine, the *gayatri*, or the formlessness and towards rationality.⁹⁰ But that the sublime was to be found through Orientalism and also found to be of relevance to Western (common law) juridical thought is noteworthy and essentially unmasks the other face of Europeanism. In this sense, the application of Jones's project was not limited to the commercial interests of the East India Company. The translation of *Manu* was not an attempt to re-create an alternative history of the law, but to ascertain the origins of the essence of law and the secrets of its subjectivity. What was needed was an idea of universal subjection and submission not to the state, or a monarch but to the law as a universal phenomenon mediated by the judge as

⁸⁹ James Beattie, *Treatise 1783*, quoted in Sue Chaplin, *How the Sublime Comes to Matter in Eighteenth Century Legal Discourse - An Irigarayan Critique of Hobbes, Locke and Burke*, 9 FEMINIST LEGAL STUDIES 204 (No. 3 2001).

⁹⁰ According to Jones, the "laws of the ancient legislator are obscure when detached, yet clear when connected." 1 JONES, *supra* note 12, at 584 (Letter to Edward Hay). It is precisely this process of finding connections that rationalises the Oriental sublime spirit of Oriental law.

sublimis. What the romantic fantasy of Oriental excess did was to uncover the theoretical arsenal needed to establish this omni-jurisdictionality. It exposed a desire to institute a terrifying excess as the presupposition of legal universalism. In drawing out the perceived similarities between Hindu law and the Common law, Jones provided a plan for a universal law in which *all* are to be subjects of the law. By the Eighteenth century, Oriental excess was to provide the co-ordinates by which the legal subject was to be dominated by the law.