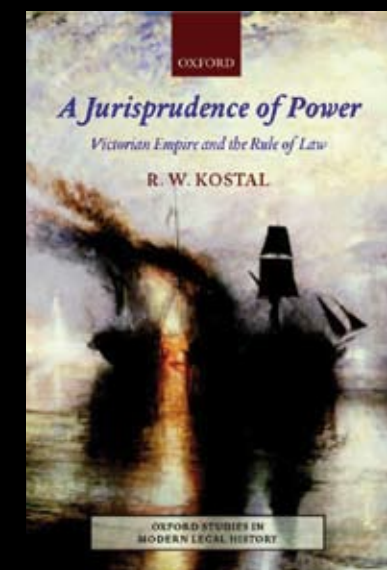




Limits of Power

In his new book, Dr. Rande Kostal explores the clash between 19th century British imperialism and the rule of law



In his new book Rande Kostal analyses the controversial imposition of martial law in Britain's colonies in the 19th century

Prof. Rande Kostal writes in the law library basement

As an upper-year student at Western Law, Rande Kostal '81 took a seminar course in legal history. It led to an important insight: "There can be no profound understanding of our law without history, and no profound understanding of history without law."

"It's a pretentious aphorism, but I stand by it," says Kostal, who has been a professor at Western Law for 20 years. His new book, *A Jurisprudence of Power, Victorian Empire and the Rule of Law*, employs historical and legal scholarship to shed light on one of the most important questions of our time: how to exercise political power within the rule of law.

When Kostal first came to Western Law, after two years of undergraduate history, he felt that he was leaving behind his

dream to become an historian. In those days there were few jobs for scholars, and Kostal felt that the practice of law was a safer way to make a living. During his articling year, though, he decided to take one more stab at history, and talked his way into a Master's program at McMaster University. After completing his Masters, he received his call to the bar and joined a Hamilton law firm. Shortly after he began practice, he received a telegram from England informing him that he was the recipient of a full scholarship to study law and history at Oxford University.

Kostal's doctoral dissertation at Oxford focused on the role of law and lawyers in the industrial revolution, and later became a book, *Law and English Railway Capitalism*. The book won

the 1995 Ferguson Prize, awarded by the Canadian Historical Association, for the best book written by a Canadian on a subject other than Canadian history. After Oxford he accepted a fellowship at McGill, and then was recruited to Western Law. While doing his doctoral research, Kostal came across newspaper accounts of the bloody revolt in the British colony of Jamaica. The peasantry, mostly former black slaves, suffered terribly from drought and poverty, a plight made worse by religious and political tensions. Enraged by a blatant miscarriage of justice, a group of black peasants attacked a parish courthouse in 1865 and killed some white officials, including the Magistrate. The colony's Governor, Edward Eyre, declared martial law, and initiated a reign of terror. The brutal suppres-

sion resulted in the shooting and hanging of hundreds of innocent blacks, as well as the execution of the most prominent black leader in the country, who had willingly come forward to be exonerated.

Jurisprudence of Power, the runner-up for this year's Ferguson Prize, follows the legal and political controversy that erupted in England when news of the massacre reached its shores. Liberal politicians, radicals, philanthropists, and church leaders formed a coalition that pressed to investigate the events and charge Edward Eyre with murder. On three occasions the matter was laid before a Grand Jury, which in each instance refused to indict. "While the Jamaica controversy had its historians, no-one had ever made a serious study →

of the important legal dimensions of the episode," says Kostal. "That left me with a lot of good timber to cut."

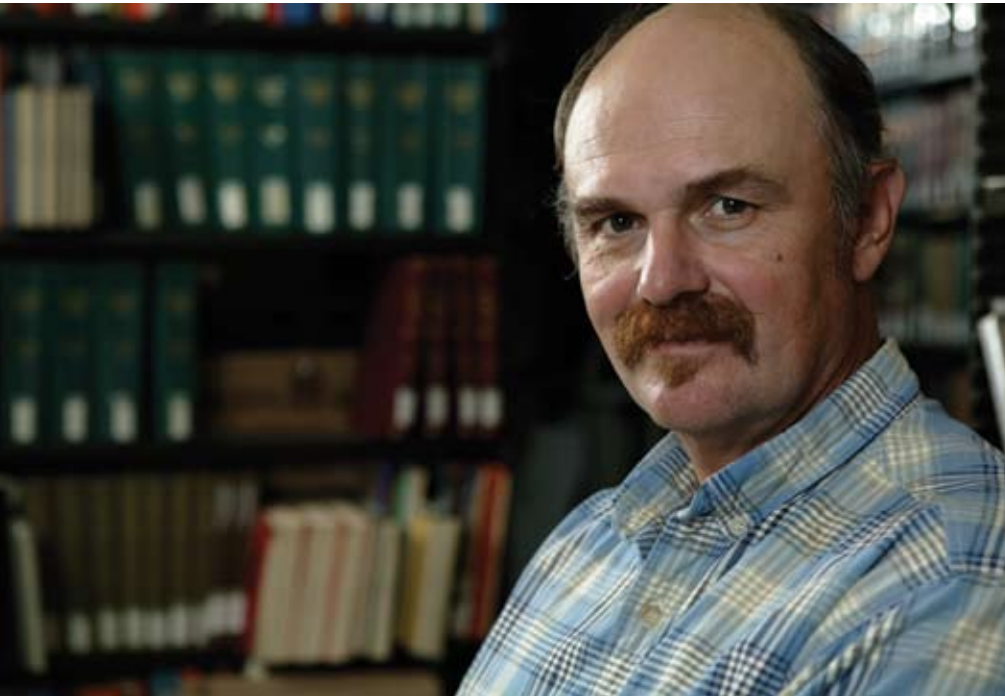
As an imperial state, England had to wrestle with a contradiction: how to dominate foreign lands and peoples while keeping faith with its commitment to the principle of government by

sation about the perennial question: how do we constrain power?"

It's a question, of course, that has great relevance today. "The current predicament of the United States with its prison at Guantanamo Bay, and even our own posture toward extremism in Canada, are manifestations of an old problem," says Kostal. "For liberal nations, the tension between power and law never goes away."

Kostal is now turning his attention from the 19th century to the 20th. He is beginning research on a new book that examines the United States as a nation builder, and focuses on the reconstruction of Germany and Japan. "While there's an extensive body of literature on the politics of nation building, there is almost no literature on its legal dimensions," he says. "As a historian trained in law I think I've got something useful to contribute here." "

As the United States wrestles with the situation in Iraq, nation building has become one of the most pressing challenges of the day. Although he admits it's a daunting undertaking, Kostal is excited by his research. "The beauty of



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law. The attempt to prosecute Edward Eyre for the murder of Jamaican rebels became the great Victorian test case in the accountability of the powerful to the legal order. The battle that ensued, much of it fought in the courts, is a landmark in the history of the idea of the rule of law, says Kostal. In the end, the Grand Jury reflected the global view that terror was sometimes necessary to maintain order throughout the empire and ultimately achieve its civilizing mission. "I argue in the book that this was an important moment in Britain's and the world's conver-

combining legal and historical scholarship is that I get to view the law as it was and is becoming. Not many scholars get to have it both ways." ✎