Empires and Legal Pluralism

*Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World*

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The subject of empires is both very old and very new. An old narrative of a transition from empires to nation-states has now given way to an emphasis on the centrality and persistence of empires in world history. At the heart of this history is a recognition of the importance of legal pluralism to empires, which invariably relied on layered legal arrangements within composite polities. Empires were legally plural in their core regions as well as in their overseas or distant possessions. Many empires assembled political communities boasting divergent constitutional traditions; uneasily maintained overlapping or clashing royal, ecclesiastical, local, and seigneurial jurisdictions; and encompassed a variety of forms and sources of law. Such pluralism often grew more complex in colonies and far-flung peripheries as administrators and settlers dealt with indigenous, enslaved, and conquered peoples. The resulting legal orders encompassed multiple zones with unstable and varied relationships to one another and to imperial centers.

Colonial administrators and jurists studied legal pluralism without using the term. Officials and settlers described plural institutions and practices in order to guide rulers and, sometimes, to question the justice of empire itself. The Spanish scholastic Francisco de Vitoria, for example, in the process of criticizing the conduct of Spain in the New World, developed legal rationales for European conquest and colonization that balanced Castilian and indigenous rights and jurisdictions.1 Juan de Solórzano Pereira and Thomas Pownall were
among the more prominent imperial administrators who put the problem of plural legal orders at the forefront of efforts to canvass and reform colonial governance. In defending Dutch imperial interests, Hugo Grotius addressed central problems of legal pluralism and empire, in particular in evaluating the ways that jurisdiction could extend into the sea independently of claims to dominion. Such preoccupations continued into late-colonial and postcolonial contexts, encompassing debates about definitions of quasi-sovereignty and the legal status of political communities borne out of the expansion, fragmentation, dissolution, and reconfiguration of empires. Across the centuries, persisting questions about the nature and structure of plural legal orders in empires reflected and informed wider currents of religious, legal, and political thought.

This volume takes as its subject the shifting structures and processes of legal pluralism as well as historically changing ways of imagining and describing legal pluralism in empires. The chapters contribute to a new narrative of world history that places empires at its center. They present new findings and pose new questions about the complex and contingent configuration of imperial law—not as a structure of command but as a set of fluid institutional and cultural practices.

Though a relatively new subject, the study of plural legal orders in empires has already passed through several phases. Legal pluralism drew the attention of scholars in the middle decades of the twentieth century who sought to map the evident legal complexity of colonial and postcolonial societies. Their efforts featured, as one scholar has put it, “a spirit of aggressive celebration of . . . [the] romantic assumption that nonstate law was more egalitarian and less coercive than state law.” Studies of legal pluralism in the 1970s and 1980s also argued for analysis of law not as doctrine but as a social and cultural process, a perspective developed by anthropologists in colonial and postcolonial settings, then applied by them to the examination of legal change in societies labeled as complex and modern. Legal pluralism came to be associated in the 1990s with an emphasis on the instability of legal order and a “constructionist” understanding of multicentric legal systems as contingent products of conflict.

Such efforts led logically to increased scrutiny of legal processes in empires. Sally Merry, Sally Falk Moore, Martin Chanock, and other scholars bridged anthropology and imperial history in documenting the persistence of colonial jurisdictional complexities. At the same time, historians were building on what had been largely national and imperial traditions of the study of law to develop rich new currents of research on the legal history of the Chinese, Ottoman, Spanish, British, French, and Russian empires, efforts that increasingly drew attention to cross-imperial comparisons. Scholars began to probe, too,
the degree of imperial influence on processes formerly regarded as the keys to national legal development—from currents in constitutionalism to the legal underpinnings of sovereignty. The emergence of new regional fields, meanwhile, especially the rise of Atlantic and Indian Ocean history, stimulated questions about the legal foundations of inter-imperial and global regimes.  

These and other projects gave new relevance—and a different spin—to the decades-old concept of “legal pluralism.” Historians began to take seriously the idea that changes in the plural legal order constituted an important piece of the narrative about the shifting international order. This perspective has led to studies of the ways in which jurisdictional conflicts spurred shifts in the structure of plural legal orders, contributing, for example, to the formation of the colonial state or to “settler sovereignty.” Some scholars have reframed colonial legal history as a narrative of multiple and fluid imperial constitutions. Still others have sought to locate debates about “rights” in the context of jurisdictionally complex imperial law, or have followed metropolitan legal practices through new variations on the edges of empire.

We can now profitably take stock of these approaches to legal pluralism and empires—and also begin to look beyond initial contributions. This volume seeks to advance the field both by identifying new research directions and by connecting historical studies to broadly defined questions about the nature of law and legal politics in empires. The volume’s essays enrich understandings of imperial sovereignty; analyze the legal strategies of conquered subjects, slaves, and religious minorities; probe the relation between legal pluralism and inter-imperial law; and investigate circulating ideas about legal pluralism. Many of the chapters reflect a view of legal pluralism that emphasizes its rootedness in jurisdictional politics. Some chapters explore historical actors’ uses of political and religious thought to structure, justify, or undermine plural legal regimes. Jurisdictional conflicts and the strategic manipulation of ideas and information about legal pluralism are shown to have worked together in shaping the history of empires. Imperial law represented a medium of politics at the same time that it reflected ways of representing order, authority, and rights that changed more slowly and provided participants in legal disputes with a durable, if flexible, resource.

Jurisdictional vs. Normative Legal Pluralism

The concept of legal pluralism comes with a troubled past. Social scientists and legal scholars have struggled with the term’s definition, vying to capture the structural relation of multiple spheres of law while also recognizing the porousness of such spheres and the fluidity of institutional arrangements.
This section summarizes problems embedded in the dominant approaches to the subject before offering an alternative perspective that defines legal pluralism as a formation of historically occurring patterns of jurisdictional complexity and conflict. Among other benefits, the approach we outline allows researchers to connect the history of legal conflicts in empires to the study of circulating ideas about legal pluralism. It also lays the foundation for comparative histories of legal pluralism in global and regional formations.

Scholars presented the study of legal pluralism as a correction to a deeply ingrained view that state law is necessarily central to all legal orders, a perspective that one influential essay defined as “the ideology of legal centralism.”¹² Those who claim that all societies are characterized by legal pluralism have not, however, agreed on the multiple entities that make up composite legal orders. Some speak of “two or more legal systems,” others identify multiple “semi-autonomous social fields,” and still others propose a plurality of “rule systems” or “different social normative systems.”¹³ Many scholars writing about legal pluralism have placed in the foreground distinctions between state law and nonstate law.¹⁴ Some propose an understanding of legal pluralism as encompassing all sources of law or rules of conduct in a given territory or social context, ranging from the state’s legal commands through customs, habits, religious precepts, and codes of etiquette. They suggest that to study this “normative” legal pluralism is to canvass potentially all the rules of various origins that people feel compelled to follow, whether or not these are imposed by institutions or backed by sanctions.¹⁵

From our perspective as historians of empires, these overlapping approaches present three main problems. First, emphasis on a distinction between state and nonstate law draws attention away from the complexities, confusions, and conflicts within “state law” while also potentially exaggerating the homogeneity and insularity of “non-state” or “customary” law.¹⁶ Some critics have complained that the supposition that all ordered social behavior is law-like opens a limitless horizon for the study of legal pluralism.¹⁷ In the study of empires, such a tendency appears less dangerous than the representation of imperial legal orders as comprising sets of neatly stacked and bounded legal spheres. Layered and composite legal arrangements in empires featured overlapping public and private jurisdictions and were characterized by continual restructuring, changes that resulted in part from the legal strategies of often litigious and legally sophisticated imperial subjects.¹⁸

Second, a key shortcoming of many attempts to analyze legal pluralism has been a tendency to view the phenomenon ahistorically or to incorporate an overly simplified historical narrative of rising state power. This flaw is particularly clear in attempts to formulate typologies in which state law
figures in opposition to “nonstate” law. Consider the common assertion that state law descended or was imposed on “other” law in linear and consistent ways across several centuries. Moore’s careful description of “semi-autonomous social fields” as law-like, for example, contrasted sharply with her rendering of state law as expanding and converting customary law into a colonial “residue.” Tamanaha insists on an understanding of the rise of state law as “contingent,” but then characterizes its dominance as a “development which occurred initially in the West.” Even a scholar calling for “limited, operational, historically contingent definitions of law” as a key to arriving at a sufficiently complex understanding of state law in legal pluralism comes up with a strained example of the benefits of this move: its illumination of the way state institutions “are likely to intervene” when “a private normative order . . . directly violates state law.” Historians of empire note that the construction of the imperial state responded to an array of political and legal problems and pressures; even (or especially) in political thought, the boundary between state and private legal spheres was not just unstable but also unclear and often a matter of fierce debate.

The need for more nuanced historical analysis of legal pluralism connects to a third problem for historians of empire: a dearth of sustained analysis of the changing and often locally specific understandings of law and legal complexity as presented and debated by historical actors, including state agents. Here an emphasis of “normative” legal pluralism on rules and norms creates methodological problems by asking historians to uncover elusive subjective beliefs about the applicability and ordering of bodies of law. In contrast, to the extent that we focus on jurisdictional conflicts, we examine arenas from which documents are more likely to survive, uncover disputes in which participants gave reasons for their actions, and analyze cases whose outcomes altered the future interplay of institutions and the expectations of historical actors. It becomes possible to combine an understanding of legal pluralism as a jurisdictional web without abandoning the study of the intellectual history of legal pluralism. Recent intellectual histories of empire show that engagement with imperial conflicts drew from and informed broader trends in thought while also sometimes prompting jurisprudential and philosophical innovations. Without the presumption of a connection to normative structures, the study of intellectual approaches to legal pluralism opens up interesting questions about the relation of political and legal discourse to local and regional histories, and to shifting strategies of legal actors within empires.

Over a decade ago, Lauren Benton proposed replacing the study of normative orders with a focus on patterns of jurisdictional conflicts that
propelled change in the structure of colonial legal orders. She applied the term “jurisdiction” to the exercise by sometimes vaguely defined legal authorities of the power to regulate and administer sanctions over particular actions or people, including groups defined by personal status, territorial boundaries, and corporate membership.

A jurisdictional perspective helps to address the problems identified in writings on legal pluralism. The study of jurisdictional politics does not depend on a general definition of “law.” Nor does it require making distinctions between “state” and “nonstate” law. The jurisdictional claims of a wide range of authorities, from a guild or merchant ship captain to a conquistador or trading company, can be analyzed without their being defined neatly as public or private. Jurisdictional divides come into focus and matter most to an understanding of legal pluralism when conflicts occur, and so a methodological advantage of the approach is to focus attention on clusters of conflicts, rather than elusive and often inconsistently applied rules or norms. This approach invites historical analysis because it becomes possible to analyze structural shifts propelled by the legal strategies of parties to jurisdictional conflicts.

Of course, historical actors making legal claims did not focus exclusively on jurisdictional divides. They often cited natural law, divine precepts, the ius gentium, and other bodies of law or norms without connecting them explicitly to specific jurisdictions. A loose or indirect connection to jurisdictional politics in fact often made sense when people were citing laws not for forensic advantage but as a protest ideal, a resource for negotiating social status, or a vocabulary for politics. Cases of conscience literature that proliferated in early modern Europe and its colonies, for example, sorted through potentially clashing divine, natural, and civil law to guide the individual’s behavior on a wide range of issues, from usury and tithes to control of labor and political allegiance. Such discourse about legal pluralism exerted influence over long periods and may not be captured by an emphasis on jurisdictional tensions.

The study of jurisdictional conflicts and the analysis of evolving and circulating ideas about legal pluralism remain powerfully connected, however. Their combination can lead to rich veins of research linking engagement in legal conflicts within and across empires to the development of legal and political thought. Jurists and imperial agents drew on multiform legal repertoires, including and especially ideas about legal pluralism, in defending a range of legal proposals and actions in empires, from occupation and conquest to humanitarian reforms. Further, as Benton has recently shown in relation to imperial sovereignty, and as Richard Ross and Philip Stern argue
in this volume (chapter 5), the contemplation of problems of imperial rule developed together with long and varied traditions emphasizing the legitimacy of decentralized power. Jurisprudence worked together with what one historian has called “jurispractice” in shaping imperial legal systems and inter-polity legal regimes.

Jurisdiction and Empire

What do we know about jurisdictional politics in empires? The conflicts served as an especially powerful engine of change in the relationship of empires to one another and to settlers, merchants, imperial administrators, and indigenous peoples. Patterns of legal pluralism across empires spawned possibilities for inter-polity contact and trade, and acted as catalysts for the emergence of global legal regimes. Jurisdictional conflicts both responded to and created claims to legal authority by old and new political communities, corporations, and emerging colonial states. This section reviews some of the accomplishments and limitations of research developed within this perspective. We consider some of the ways historians might begin to advance and refine the approach, a project taken up implicitly or explicitly by many of the essays in this volume.

Studies of patterns of legal politics across empires have complicated the image of state law as uniform and bounded. When viewed as encompassing the multilayered and multicentric law of empire-states, and exhibiting patterns of jurisdictional complexity that persist into the era of robust claims about state legal hegemony, state law becomes not a single arena opposed to nonstate law but a composite of jurisdictions with unevenly exercised authority. Philip Stern’s “Bundles of Hyphens: Corporations as Legal Communities in the Early Modern British Empire” (chapter 2) demonstrates how overseas trading and settlement companies were semi-independent associations that at times competed with the state by claiming monopolistic authority over territories and peoples under their command. Corporations were not only economic entities. They oversaw religion, justice, and education; they conducted diplomacy and fought wars; and at times they spawned a “public sphere” that provided a focus for sociability and allegiance. Emphasizing the resemblance of overseas companies to a commonwealth writ small questions the conventional hierarchical distinction between supposedly superior states and dependent corporations. In this fashion, Stern fractures the state and the category of “state law.”

From another direction, so does Helen Dewar’s “Litigating Empire: The Role of French Courts in Establishing Colonial Sovereignties” (chapter 3).
Leaders among seventeenth-century French colonists in St. Lawrence Valley and Acadia contended for power by appealing back for support to officials in a French state that was profoundly riven by normative and jurisdictional pluralism. No unified crown or state prevented settlers from strategically invoking the most favorable among the competing customs, privileges, and jurisdictional competences available in France. Meanwhile, metropolitan powerholders sought to extend their juridical and administrative reach into New France in order to reinforce authority at home. Jurisdictional multiplicity in both the colonies and the metropolis encouraged the creation of a series of New World “feudal enclaves” delineated not by territorial boundaries so much as the effective reach of personal authority, an authority in part defined by which elements of the plural legal order in France remained in play in a given context overseas.

The study of jurisdictional pluralism sheds light on understandings of the imperial constitution. Alternative visions for the arrangements of authority encompassing sovereign power and the quasi-sovereignty of colonial entities were taken up by different constituencies in the course of conflicts over such fundamental constitutional questions as the reach of crown prerogative, the rights of subjects, and the content and scope of imperial legislation. Historians who have placed such rubrics in the framework of shifting legal pluralism have noted a long-nineteenth-century turn away from jumbled jurisdictions to the imagination of a more hierarchical and streamlined legal administrative order.²⁹

In this volume, Lauren Benton and Lisa Ford explore a dimension of this shift in “Magistrates in Empire: Convicts, Slaves, and the Remaking of the Plural Legal Order in the British Empire” (chapter 7). They note that threats to order in British colonies at the turn of the nineteenth century were a matter of perspective. Colonial elites feared unruly subordinates and the intervention of imperial officials; metropolitan observers viewed legal pluralism itself as a source of disorder because it protected private jurisdictions and the exercise of arbitrary and unauthorized power in the colonies. Benton and Ford analyze cases in which these contrasting perspectives come into clear focus, then trace their convergence with regard to one proposed solution: the redefinition of magistrates as imperial agents. The call to reform the magistracy emerged in the same decades in distant and very different parts of the British Empire, in the process focusing attention on the shared jurisdictional politics of slave and convict societies.

The search for synchronous shifts in imperial legal structures has been related, further, to the attempt to use legal pluralism as a lens through which to grasp inter-imperial configurations. The multiplicity of imperial legal
orders represents another dimension of legal pluralism, one that we can understand as helping to compose regional and global legal regimes. For example, the routine practice of granting a degree of autonomy over legal affairs to merchant communities in the early modern world undergirded long-distance trading diasporas by making foreign legal systems understandable to merchants and travelers. The same repeated structures also established cross-polity frameworks for new jurisdictional conflicts. The strategies of indigenous people, slaves, religious minorities, and other subordinate groups contributed to pressures to change jurisdictional ordering within empires and helped to create continuities giving rise to transimperial legal regimes. An illuminating example of this dual process is explored in this volume by Linda Rupert in “Seeking the Water of Baptism: Fugitive Slaves and Imperial Jurisdiction in the Early Modern Caribbean” (chapter 8). Rupert shows that fugitive slaves crossing imperial borders exploited inter-imperial legal complexity while also prompting Spanish efforts to streamline jurisdictions within the empire—a process that in turn influenced Dutch legal policies. The result was a transimperial legal zone encompassing Curaçao and the Spanish mainland, a micro-region in which two dimensions of legal pluralism were partly directed by patterns of marronage.

Such complexity connected directly to efforts to define and construct sovereignty in empires. Rather than representing a fully formed phenomenon in metropolitan centers that was exported to and imposed beyond the center, sovereignty itself is best understood as a multiform and mainly elusive project. Jurisdictional conflicts involving settlers and indigenous peoples in disparate parts of the British Empire at the turn of the nineteenth century generated subtle, synchronous shifts toward understanding sovereignty as territorial. P. G. McHugh’s “A Pretty Government!: The ‘Confederation of United Tribes’ and Britain’s Quest for Imperial Order in the New Zealand Islands during the 1830s” (chapter 9) is an exemplary study of this transition. In line with their practice in the East Indies, the British recognized plural legal orders in New Zealand in the 1830s. Britain claimed jurisdiction over their nationals while working with and through the Maori, who exercised the primary jurisdiction over the islands. Expanding settlement, lobbying by missionaries, and Maori political turbulence provided the context for the cession of “sovereignty” from indigenous chiefs to the British in the Treaty of Waitangi (1840), a transfer that partly obscured the continuing importance for decades of plural, overlapping jurisdictions. McHugh’s reconstruction of pre-1840 jurisdictional pluralism helps explain the ideological and practical meaning, and the limits, of what came after: British claims to “sovereignty.”
Political and Religious Imagination

To ask why a particular form of plural legal order emerged in a given empire is to invite a wide range of explanations. Limitations of money, coercive ability, and administrative capacity might favor pluralism, as might the play of political rivalries in a metropolis, tensions among inherited legal forms and institutions, the accommodation of diverse settlers’ and indigenous groups’ interests in the service of securing order, and so forth. Aside from such pressures, the political and religious commitments, or imagination, of imperial elites—views about ideal governance and God’s expectations—shaped the structure, limits, and justifications of pluralism. Several of the essays in this volume pursue these important connections.

Karen Barkey’s “Aspects of Legal Pluralism in the Ottoman Empire” (chapter 4) emphasizes how Islamic thought both supported and curtailed the partial legal autonomy that Christian and Jewish communities enjoyed under the millet system in the sultan’s domains. On the precedent of the mid-seventh-century Pact of Umar offered to the Christians of Syria, Muslim communities, including the Ottomans, expected the “peoples of the book” to consent to subordinate status in exchange for the right to govern personal and family affairs through their own religious tribunals. Yet as Muslim thought ratified pluralism, it also limited Christian and Jewish jurisdictions, ensuring that they were neither sealed off from nor hierarchically equal to Islamic tribunals. The Ottoman’s “state Islam” in conjunction with the sultan generated rules of interaction for Jewish, Christian, and Muslim courts, while insisting on the cultural and symbolic primacy of the latter. The result was not a fixed legal order but a “relational field” in which Ottoman hegemony secured scope for legal action by minority communities and in which many of the strategies they pursued, such as frequent recourse to state courts, reinforced Ottoman legal authority.

If religious and political imagination could structure and legitimate particular forms of jurisdictional interactions within a plural legal order, it could also uphold the idea of pluralism itself. Historians of early modern political thought preoccupied with the rise of the modern state have lavished attention on “centralizing” discourses, particularly theorists such as Bodin, Hobbes, and Pufendorf, represented as champions of sovereignty. But the plural legal orders so prevalent on the ground in early modern Europe did not struggle against a predominantly hostile intellectual climate. Richard Ross and Philip Stern’s “Reconstructing Early Modern Notions of Legal Pluralism” (chapter 5) explores how ideological support for plural legal orders could be found in a wide range of intellectual projects. These ranged from debates over the
right of resistance and the divine right of rulers through historical work on the ancient Jewish commonwealth and theological disputes over which precepts “bound conscience” and finally to writings on political economy and the place of family. Advocates of pluralism and centralism did not simply contest each other so much as emerge, interlinked, through engagement with similar problems and adoption of related vocabularies.

Our familiarity with the challenge that centralizing discourses of sovereignty posed to pluralism obscures another way in which programs of political and religious reform undermined plural legal orders—through arguments that some human good, whether piety, civility, or productivity, required the removal of selected populations from a pluralist framework. This possibility emerges as a recurrent theme in the treatment of indigenous peoples in Spanish America. Divisions between imperial and colonial law and between secular and religious jurisdictions made New Spain and Peru highly pluralist, as did the creation of a “republic of the Indians” providing native communities with a corporate identity that burdened them with labor and tribute obligations as it sustained rights of self-government and an array of special legal privileges. In the middle of the seventeenth century, Jesuit missions to the Guarani Indians in Paraguay, in the service of better Christianizing and “civilizing” their charges, self-consciously reduced within these missions the jurisdictional multiplicity that native peoples commonly experienced.31

A century later, as Brian Owensby insightfully demonstrates, schemes to increase the productivity and economic value of natives weakened legal pluralism as a central organizing concept used for thinking about indigenous peoples (“Between Justice and Economics: ‘Indians’ and Reformism in Eighteenth-Century Spanish Imperial Thought” [chapter 6]). Seventeenth-century Spanish American rulers concentrated on the king’s responsibility to preserve the common good and dispense justice to his different communities of vassals through an array of overlapping and competing jurisdictions. Several mid-eighteenth-century proposals to improve the empire focused on making indigenous peoples more economically vibrant and “useful” to Spain, casting them as producers, consumers, and laborers rather than as members of self-governing communities in the republic of the Indians. By thinking about natives within a framework of productivity, Owensby concludes, imperial reformers reduced the salience of an inherited discourse about jurisdictional multiplicity in a plural legal order. Reformers did not advocate legal centralism directly in the fashion of Bodin and Hobbes so much as efface pluralism for selected populations by reorienting discourse from one value to another, from justice to utility.
In different ways, Owensby, Ross and Stern, and Barkey explore the intellectual ecology that surrounded and sustained—or undermined—plural legal orders. Explicit, articulated political and religious thought was important, but only one part of this larger intellectual ecology, whose various aspects invite further research. Consider in this respect not only the content of reflection about law but the means of its transmission. To what extent was there an elective affinity between plural legal orders and fragmentations and asymmetries in the circulation of legal knowledge? Among the obstacles to a state-dominated judicial administration in the New World settlements was the state's relative difficulty in disseminating its views about the content of law and about the political and normative frameworks that explained law's purposes and meanings. The French, Spanish, and English empires transmitted legal knowledge across the Atlantic not only through imperial officials but also through commercial and religious networks that often pursued their own interests. Churches, colleges, and merchants no less than imperial administrative structures provided points of entry for law created or ratified in the metropolis. Within the New World, social networks proved critical to the circulation of law, often in manuscript and oral form, at times increasing the ability of neglectful or self-interested brokers to bury or transform a metropolitan sovereign's legal messages and outlook.\textsuperscript{33} We are only beginning to understand how local domination, fracture, and variation in the means of legal communications composed the intellectual ecology that supported and shaped pluralism.

Conclusion

A peculiar challenge in the study of legal pluralism in empires is defining historical moments or settings in which jurisdictional tensions mattered in relation to other shifts. In the long period covered by this volume, two broad patterns of legal pluralism in empires have attracted special attention from historians. The growth and reconfiguration of empires to include new groups of subjects and new territories—nonlinear processes of long duration—prompted clusters of conflicts linked to the contested legal status of conquered peoples, the articulation of legal systems of colonizers and colonized, and the shifting scope of legal authority exercised by imperial offices and agents. A second pattern involved the connection between jurisdictional politics within and across empires and the move toward a more hierarchically structured legal order defined in part by the assertion (whether realized or not) of imperial jurisdiction. Examples of the first pattern stretch across the centuries; the second pattern emerged fitfully but has been associated particularly with the reconfiguration of empires in the long nineteenth century.
This broad framework has posed as many interesting questions as it has settled. Some open questions involve change inside empires. For example, what characteristics make a colonial controversy take on the qualities of “scandal” and therefore command attention across imperial peripheries and centers? To what degree did the behavior of relatively powerless legal actors—think of the fugitive slaves whose legal paths are traced in this volume by Rupert—urge imperial institutional reforms? Other research questions address the broad systemic implications of legal pluralism in empires. What was the relation of micro-polities, confederations, and business enterprises to the routines and structures associated with legal pluralism in empires, and how did such relations change over time? In what ways did efforts to devise a coherent imperial legal order inform the imagination of international order and international law?

The chapters in this volume mark significant contributions to such questions while also pointing to new research directions. The jurisdictional autonomy of corporations described by Stern (chapter 2) and the jurisdictional puzzles stretching from metropole to colony as detailed by Dewar (chapter 3) for the French empire reveal the need for further study of the legal underpinnings of early imperial ventures in both the Atlantic and Indian Ocean worlds. Barkey’s depiction of Jewish, Christian, and Islamic courts within the Ottoman millet system (chapter 4) and Owensby’s discussion of indigenous customary law and tribunals in the Spanish empire’s “republic” of the Indians (chapter 6) suggest the potential for histories of the shifting legal status of religious and political communities inside empires to expand comparative possibilities and merge intellectual and jurisdictional analyses. In reflecting on the diverse intellectual traditions that informed Europeans’ thinking and writing about legal pluralism, Ross and Stern (chapter 5) pose novel questions about the activation of arguments about the legitimacy of opposition to royal authority in a wide range of imperial conflicts. They point, too, to the importance of deepening our understanding of the way analogies developed and operated across arenas of legal discourse—for example, linking the relation of religious and secular law to debates about the autonomy of corporations and households. Benton and Ford (chapter 7), Rupert (chapter 8), and McHugh (chapter 9) examine multiple and strikingly different contexts in which conflicts shaped emergent claims of imperial jurisdiction in plural legal orders between the late-eighteenth century and the mid-nineteenth century. The variety suggests a need for further analysis of the period as one of global legal transformation as well as more research on the way jurisdictional politics interacted with the formation of inter-imperial legal regimes and intra-imperial constitutional discourse.
The volume concludes with wide-ranging chapters, one by Paul Halliday and another by Jane Burbank and Frederick Cooper, which assess the previous chapters’ multiple strands of analysis and point out both the hazards and potential rewards of pushing further the study of legal pluralism in empires. Halliday urges historians not to forget the genuine violence that could accompany state legal interventions, while he also reminds us that “the state’s law might emanipate as well as repress.” The term “pluralities,” he notes, may reflect better than “legal pluralism,” with its implications of order bestowed by observers, the variegated relations of subjecthood that channeled choices for historical actors and shaped their understandings of the sources of legal diversity. While Halliday notes that state strategists in the late-eighteenth and early-nineteenth centuries increasingly viewed “plurality” as a condition to be controlled, Burbank and Cooper caution that the very normality of legal pluralism often turned the management of multiple jurisdictions into “conventional practice.” Imperial officials could regard jurisdictional complexity as acting to reinforce state power rather than unleashing transformative conflicts. The dynamics of legal pluralism, they show, extended well beyond the end point of the mid-nineteenth century chosen for this volume, and beyond any other artificial marker separating “early modern” and “modern” worlds.

Both concluding chapters identify and explain the significance of directions for further research. The message is one that we, as editors, heartily embrace. The volume’s findings will, we hope, form the basis for open-ended questions about legal pluralism and empires—in earlier and later periods, and in other empires and regions. Themes and phenomena explored here that deserve further investigation include the analysis of political and ideological representations of legal diversity; the relation between legal pluralism and shifting configurations of imperial sovereignty; and cross-imperial interactions, from the movements of legal subjects to the institutional echoing effect of transformations in imperial governance. The subjects and approaches of this volume overlap with parts of many fields, including the comparative history of law, colonial and imperial history, and world history. The chapters also establish the study of legal pluralism and empires as a scholarly project with its own trajectory and future.

Notes


14. Griffiths (“What Is Legal Pluralism?” 38) distinguished between the “strong legal pluralism” of state law operating alongside a plurality of nonstate legal orders from “weak legal pluralism” in which pluralism occurs “within the framework of state law.” Merry offered a variant of this distinction in defining “classic legal pluralism” as produced in colonial and postcolonial societies and “new legal pluralism” as characteristic of advanced industrial countries (Merry, “Legal Pluralism,” 872).


17. For comment on the pitfalls of this debate within the literature on legal pluralism, see Merry, “Legal Pluralism,” 879; Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism,” 193; Shahar, “State, Society, and the Relations between Them,” 419, 439.


22. The categories of “private” and “public,” for example, had no settled meaning throughout the period covered by this volume, and the location of state legal authority was a centrally disputed question between imperial centers and peripheries. See Christine Daniels and Michael V. Kennedy, eds., Negotiated Empires: Centers and Peripheries in the Americas, 1500-1820 (New York: Routledge, 2002). As Malick Ghachem points out, the public-private distinction in some imperial settings makes sense in characterizing jurisdictional tensions, as between the imperial state and the legal authority of slave owners on the eve of the Haitian Revolution. Malick W. Ghachem, The Old Regime and the Haitian Revolution (New York: Cambridge University Press, 2012), 179.


25. These books instructed readers about the demands of conscience, which operated even without the intermediation of jurisdictions and whose violation imperiled the soul. Arthur R. Jonsen and Stephen Toulmin, The Abuse of Casuistry: A History of Moral...
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29. See Benton, Law and Colonial Cultures, chapters 5-6.


31. Ford, Settler Sovereignty.

32. The Jesuit missions to the Guaraní were not unique. Settlements in the New World committed to serious programs of godly discipline often reduced levels of legal pluralism. Richard J. Ross, “Puritan Godly Discipline in Comparative Perspective: Legal Pluralism and the Sources of Intensity,” American Historical Review 113 (2008): 975-1002, esp. 997-99 (on the Jesuits and other examples).


35. The question of confederations and empire is framed by José Carlos Chiaramonte, Nación y Estado en Iberoamérica: El lenguaje político en tiempos de las independencias (Buenos Aires: Sudamericana, 2004); and for a study that provokes questions about the relation of diaspora to empire, see Francesca Trivellato, The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period (New Haven, CT: Yale University Press, 2009).