

A Global History of Law, Empire, and Geography

Author : Richard J. Ross

Date : January 31, 2011

Lauren Benton, [A Search for Sovereignty: Law and Geography in European Empires, 1400-1900](#) (Cambridge: Cambridge University Press, 2010).

Lauren Benton is well-known as one of the leading scholars exploring the relationship between law and colonialism in a world history perspective. Her prize-winning 2002 monograph, [Law and Colonial Cultures: Legal Regimes in World History, 1400-1900](#), rested on the considered belief that early modern and modern empires were everywhere marked by significant legal pluralism. Yet legal pluralism took different forms. Early European settlements in the Americas, Africa and Asia began with a “multicentric legal order;” a robust pluralism characterized by multiple systems of law and tensions among semi-autonomous European and indigenous jurisdictions, associations, and corporations exercising their own prerogatives. “Legal jockeying” among settlers and between Europeans and indigenous leaders invited the colonial state to assume a superintending role over competing private and quasi-governmental jurisdictions. A “state centered legal pluralism” thus emerged in many areas of the world.

The purpose of the book was not to better illuminate the history of a particular country or region. The book was problem-driven: at the center was the transition from multicentric to state-centered legal pluralism. Her expert deployment of case studies from four continents raised the stakes, suggesting the importance of a phenomenon that recurred in empires throughout the world. Her global perspective also allowed her to identify the causes of the transition, an endeavor harder to do and perhaps less convincing when confined to one country or empire.

Benton’s methodological commitments, along with her customary imagination and erudition, are on display in her new monograph, [A Search for Sovereignty: Law and Geography in European Empires, 1400-1900](#). She rethinks the relationship between law, geography, and jurisdictional politics in European overseas empires using a wide range of case studies drawn from the French, Portuguese and especially the Spanish and British empires between the fifteenth and nineteenth centuries. Her global approach allows her to contest two well-established narratives in imperial and legal history. To begin with, historians commonly assume that European empires wished to assert control over distinct territories defined by maps. Imperial administrators gradually, with fits and starts, enhanced the ground-level effectiveness and geographical reach of their rule. But Benton’s close look at geography and jurisdictional politics calls into question this familiar story about the “rationalization of space” (p. xii). Though empires claimed territory defined by charters and treaties, they typically controlled “narrow bands, or corridors, and . . . enclaves and irregular zones around them.”(p. 2) These “lumpy” empires were made up of nodes and pathways—sea lanes, trading posts, missions, towns, and garrisons—each maintaining uncertain and changing legal relations to the metropole. Imperial authority was patchy: strongest in corridors and enclaves and weaker elsewhere.

Law traveled abroad with the imperial administrators, settlers, merchants, and warriors who used it to claim power and resources and justify their actions. The specific features of water and land that they encountered shaped the continuous disputes about the nature and limits of delegated authority and of the rights of European subjects living overseas. Benton considers rivers, oceans, islands, and mountains. Expeditions up rivers bred strikingly frequent charges of treason amid temptations to throw off kingly authority and plunder resources. Treason trials could be used to define the spatial boundaries of empire and the terms of delegated authority. Oceans could not be owned. Yet European states assumed that they could assert jurisdictional primacy not only over friendly ports, but over sea lanes through the water. As a result, merchants and even pirates engaged in “legal posturing.” They self-servingly described actions in ways that maximized advantage in a maritime world of tangled jurisdictional claims by rival powers. Islands used for military garrisons, raiding stations, and convict transportation suffered from unfree labor and

harsh discipline. Fearing insurrection on their isolated outposts, commanders frequently exercised a cruel authority. How could the brutal mores of these “anomalous legal zones” be confined to prevent infection of the metropolis and the rest of its empire (p.165)? Mountainous regions had long struck Europeans as “primitive” zones where “backwards” people lived by archaic law. Imperial officials were all too ready to see colonial mountainous areas as insular, quick to violence, and resistant to European law; these places fell under only a constrained metropolitan quasi-sovereignty. Along with islands, rivers, and oceans, mountains brought to the foreground legal challenges and jurisdictional conflicts that complicated the rule of lumpy empires. Benton shows that geographical features posed a challenge to all empires, who responded in similar ways. Her focus is more on variation within empires than between empires.

Benton also challenges a second familiar story, the one about sovereignty understood as control over territory and borders. Historians typically assume that between the sixteenth and eighteenth centuries European states haltingly consolidated sovereignty. In this picture, empires marked by composite rule and semi-autonomous jurisdictions lagged behind metropolises but likewise moved towards fuller territorial control. Benton questions this trajectory. Empires often emphasized symbolic display and management of trade over control of borders. They experimented with plural legal systems and complicated schemes of partial sovereignty. And they experienced the continual emergence of “legal and geographic variations,” including new island work camps and penal colonies, trading enclaves, and loosely aligned jurisdictions (p. 282). Benton proposes a “more open-ended narrative about the persistence of empires and states composed of varied and sometimes-overlapping fields of partial sovereignty” (p.291) On this view, divided sovereignty was not a necessary evil of young colonies later overcome; and colonies did not routinely become better incorporated into sovereign states.

Benton uses, as a foil, accounts of imperial history that distinguish between a European zone of law and extra-European regions of lawlessness or “exception” (to use Carl Schmitt’s terminology). Where these scholars see the suspension of law, Benton labors to find “patterned variations of legal ordering” (p.287). Though often brutal, her explorers, pirates, settlers, and commanders creatively cited legal concepts to support economic and political claims, interact with indigenous people, and define their position in turbulent overseas lands. Out of this effervescence of claim-making and “legal posturing” arose principles governing land dispossession, prize law, slavery, labor discipline, and police regulations that would enjoy a long, dark future in overseas colonies. But those who would look for legal invention in places of exception will eventually encounter a familiar problem in legal philosophy and “rule of law” theory: Can every contention by pirates, captains, and wielders of the lash be styled a “legal” claim? Is there a point where, finally, will and rationalization become too brazen to be dignified as a variant understanding of law? To extend Benton’s perspective further than she does in her sober monograph would heighten the force of these perennial questions. One may accept the challenge of these questions and yet preserve Benton’s account by reading it with an ironist’s spirit: legal regimes emerged out of self-interested legal posturing repeated often enough to turn cynicism into custom.

Cite as: Richard J. Ross, *A Global History of Law, Empire, and Geography*, JOTWELL (January 31, 2011) (reviewing **Lauren Benton, A Search for Sovereignty: Law and Geography in European Empires, 1400-1900** (Cambridge: Cambridge University Press, 2010)), <http://legalhist.jotwell.com/a-global-history-of-law-empire-and-geography/>.