Law and Colonial Cultures

Legal Regimes in World History, 1400–1900

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In the late fifteenth century, as Christians were extending their rule over the remaining pockets of Moorish dominion in the Iberian peninsula, a North African legal scholar named Al-Wansharishi issued a legal finding (fatwa) to address the situation of an influential Muslim advocate in Marbella. The man in Marbella wished to obey the edict directing good Muslims to abandon Christian jurisdictions in Spain, but he felt compelled to stay and continue to work as an advocate for Moors whose property and livelihood were being threatened under Christian rule. His appearances before Christian judges to represent Muslims seemed a worthy cause, one that he apparently thought would warrant an exemption to the edict. The mufti disagreed. He ruled that it was the man’s duty to flee Spain. Contact with Christians – particularly the close dealings with Christian judges that the advocate’s role would require – was a form of contamination. The Moors staying behind were, in any case, hardly entitled to such care since they were already breaking with Muslim authority by staying in a Christian jurisdiction, the mufti explained. They should be left to their own devices.¹

Al-Wansharishi made it clear that it was Christian authority, not Christians themselves, that made contamination inevitable. Christians with subject status posed no particular threat. But to live under Christian rule was “not allowable, not for so much as one hour a day, because of all the dirt and filth involved, and the religious and secular corruption which continues all the time.”² The central rituals of Muslim religious

¹ L.P. Harvey, Islamic Spain, 1250–1500, pp. 56–58.
² Harvey, Islamic Spain, pp. 58–59.
life would be threatened – the collection of alms, the celebration of Ramadan, the daily prayers. Just as troubling to al-Wansharishi was the inevitable disappearance of distinctive forms of expression of Muslims: “their way of life, their language, their dress, their . . . habits.”

We do not know whether the Marbella advocate obeyed the fatwa. We know that some influential Moors chose to stay and fill the role of advocates for the conquered Moors. We also know that their actions, as agents seeking to reinforce one legal authority by representing cases before another, were remarkably common in territories of imperial or colonial conquest. We know, too, that al-Wansharishi’s interpretation of the stakes of this decision was repeated throughout Muslim Spain and in other settings of conquest and colonization. Colonizing authorities understood just as readily that the structure of legal authority and the creation of cultural hierarchies were inextricably intertwined. Jurisdictional lines dividing legal authorities were the focus of struggle precisely because they marked the boundaries for resources and cultural differences. As al-Wansharishi observed, the structural relation of one legal authority to another had the power to change both the location of boundaries and the very definition of difference.

Turning this statement around, we see that contests over cultural and religious boundaries and their representations in law become struggles over the nature and structure of political authority. Ways of defining and ordering difference are not just the cultural materials from which political institutions construct legitimacy and shape hegemony. They are institutional elements on their own, simultaneously focusing cultural practice and constituting structural representations of authority. Fine distinctions among groups attain an importance that appears exaggerated to observers outside a particular time and place but reflects participants’ certain knowledge that they are struggling not just over symbolic markers but over the very structure of rule.

Colonialism shaped a framework for the politics of legal pluralism, though particular patterns and outcomes varied. Wherever a group imposed law on newly acquired territories and subordinate peoples, strategic decisions were made about the extent and nature of legal control. The strategies of rule included aggressive attempts to impose legal systems intact. More common, though, were conscious efforts to retain elements of existing institutions and limit legal change as a way of sustaining social order. Conquered and colonized groups sought, in turn,

3 Harvey, Islamic Spain, p. 58.

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to respond to the imposition of law in ways that included accommodation, advocacy within the system, subtle delegitimation, and outright rebellion. The legal conflicts of colonized and colonizers were further shaped by the tensions that divided the two sides. Jurisdictional jockeying by competing colonial authorities was a universal feature of the colonial order. It called up and altered cultural distinctions, as competing colonial authorities tied their juridical claims to representations of their (special or superior) relationship to indigenous groups or sought to delegitimize other legal authorities by depicting them as tainted by indigenous cultures. Fractions within colonized populations, too, entered into conflicts with one another because of different interests in and perceptions of the legal order.

These multilevel legal contests were simultaneously central to the construction of colonial rule and key to the formation of larger patterns of global structuring. Precisely because imperial and colonial polities contained multiple legal systems, the location of political authority was not uniform across the international system. Yet international order depended upon the ability of different political authorities to recognize each other, even if that recognition fell short of formal diplomacy or treaty making. The law worked both to tie disparate parts of empires and to lay the basis for exchanges of all sorts between politically and culturally separate imperial or colonial powers. Global legal regimes – defined for our purposes as patterns of structuring multiple legal authorities – provided a global institutional order even in the absence of cross-national authorities and before the formal recognition of international law. Their study reveals a global order that was far more complex and institutionally less stable than many approaches to world history, and to global economic change in particular, have suggested. Studying legal regimes leads along pathways in two directions: toward an enhanced

4 Given the importance of law in this regard, it is frustrating and surprising that its study has remained so resolutely within the boundaries of national political histories. Even some comparative legal scholars have exacerbated the problem by overemphasizing legal sources in categorizing legal systems. See, for example, Alan Watson, who argues forcefully that rulers and elites were mainly “indifferent to the nature of the legal rules in operation” and that this indifference gave legal sources their strength and resilience in diverse colonial settings (Alan Watson, Slave Law in the Americas). Regional historians are sometimes even criticized for placing their subject in a wider context; for example, Hoffer is taken to task for including a valuable chapter on European-Indian legal relations in his history of North American colonial law because attention to French and Spanish law is “misplaced in a volume that concentrates on British North America” (Gaspare Saladino, “Review of Peter Charles Hoffer, Law and Peoples in Colonial America”).
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understanding of world history and toward a more nuanced view of cultural interactions in particular colonial encounters.  

INSTITUTIONAL WORLD HISTORY

Global institutions broadly defined include widely recurring, patterned interactions (not limited to exchange relations or formal organizations) that emerge from cultural practice. This inclusive definition helps us to tackle persisting conceptual problems of global theory. Where gaps between local process and global structure, between agency and structure, and between culture and economy have been bridged by focusing on such objects of analysis as cultural intermediaries, transnational processes, and the discourse of colonialism, these analytical strategies can be expanded and combined, moving the analysis simultaneously out toward global (and structural) and in toward local (and cultural) phenomena. Rather than offering a technique for bridging these gaps (and thus salvaging established ways of representing the global order) this approach urges us to reimagine global structure as the institutional matrix constructed out of practice and shaped by conflict. These patterned sets of behavior do not exist at, or merely bridge, separate “levels,” but themselves constitute elements of global order.

The example of international institutional ordering this book explores is the emergence, under varying historical conditions, of legal regimes in which actors immersed in different legal systems nevertheless constructed a shared understanding of legal power as a basis for exchanges of goods and information, even in the absence of an overlapping authority or a formal regulatory structure. It is possible to speak of “order without law” as emerging at the international level just as it has been shown to do in small communities or in business agreements not based on contracts. Legal regimes extended beyond the borders of particular legal systems and established repeatable routines for incorporating groups with separate legal identities in production and trade and for accommodating (or changing) culturally diverse ways of viewing the regulation and exchange of property.

Elements of such an international order can be found from the fourteenth to the seventeenth centuries in the replication of fluid,

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Years or Five Thousand). Franke interprets this comment as an endorsement for his perspective, but I view it more as a challenge to push beyond the obvious ordering function of trade (Andre Gunder Frank, ReOrient: Global Economy in the Asian Age). Finally, the project I propose has a good deal in common with the “constructivist” perspective in international relations theory, which views international norms as emerging out of the social practice of states and other social actors. See, e.g., Frederich V. Kratochwil, Rules, Norms, and Decisions; and Vendula Kubiliová, Nicholas Onuf, and Paul Kowert (eds.), International Relations in a Constructed World.

It should by now be clear that my use of the term regime to describe an institutional field linking polities that were constituted in politically and culturally very different ways departs somewhat from the use of the term to describe areas for cooperation among states (see Stephen Krasner, “Structural Causes and Regime Consequences: Regimes As International Variables”). While explorations of the conditions under which state actors will enter into agreements is analytically relevant to my project, such an approach limits our focus to negotiations that are the outcome of international order rather than its building blocks. It is the replication of forms of political authority that after all makes interstate agreements possible. My interest, then, is not in the way interstate norms and agreements are shaped but in the ways that widely replicated “domestic” political processes and conflicts produce a framework for international norms. For another argument in favor of the conflation of “internal” and “external” processes, see James N. Rosenau, Along the Domestic-Foreign Frontier.

The classic works on these two phenomena are, respectively, Robert Ellickson, Order Without Law; and Stuart MacCay, “Non-Contractual Relations in Business.” See also Lauren Benton, “Beyond Legal Pluralism.” And, on the construction of rules in the international order, see Kratochwil, Rules, Norms, and Decisions. The study of customary international law also has some relevance here, though its focus on the emergence of law out of custom in the international arena is different from my approach to international law as a function of widespread patterns of organizing multiple legal authorities.

See Michael Beyers, Custom, Power, and the Power of Rules; and Anthony D’Amato, The Concept of Culture in International Law.
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multijurisdictional legal orders. We perceive this clearly in territories of colonial and imperial expansion, where culturally and religiously different peoples employed legal strategies that exploited (and further complicated) unresolved jurisdictional tensions, particularly those between secular and religious authorities. Such tensions provided the context for law in diaspora; where ethnically distinctive groups expanded without conquering significant territory, they exercised legal control over their own communities while fitting into preexisting plural legal orders. While the formation of legal institutions was thus open-ended (and determined neither the special dynamism of the West nor the cultural character of the East), the process itself also created a common institutional framework that extended from the Americas to the Indian Ocean and beyond.

From the late eighteenth century on, routines for subordinating the law of ethnic and religious communities to state law replaced more fluid forms of legal pluralism and began also to be widely replicated. By the mid-nineteenth century, state-centered legal pluralism was being promoted as a model of governance by European administrators. Just as important, though, was its emergence, simultaneously, as an institutional “fix” for the fluid jurisdictional politics of colonial settings. Diverse polities displayed similar processes urging this transition. Jurisdictional politics became symbolically important and politically charged. Attention focused in particular on debates about the legal status of indigenous peoples and, especially, the definition of roles for cultural and legal intermediaries. Legal actors played upon these tensions in crafting legal strategies that often involved appeals to state law, even before the colonial state had articulated claims to sovereignty. Paradoxically, such processes often meant sharpening artificial divisions between “modern” and “traditional” realms, and between state and nonstate legal authorities. And as political contests shaped a structure of state-centered legal pluralism and reproduced it (in some places as a fiction of governance rather than a political reality), this shift helped to form, in turn, the interstate order.

This account, and the approach favored here, suggests an important reorientation of world historical narratives. The perspective clearly challenges Eurocentric world histories that emphasize the unique, progressive character of European institutions or that view global change as emanating exclusively from the dynamics of Western development. Particularly for the early period, the approach challenges “world systems” frameworks that link the Americas to Europe but downplay

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connections to Asia and Africa in the early modern period. Even those world systems accounts that oppose Eurocentrism by claiming the primacy of an Islamic “world system” before the thirteenth century, or the centrality of Asian economies, miss institutional interconnections between East and West. The reorientation allows us to identify international regimes in periods before the rise of an interstate system and as the products of both globalizing pressures and the internal dynamics of politics in particular places. The approach replaces searching for the roots of state formation and of a more connected globalism in Westernizing projects or in nationalist and anticolonial responses. At the same time, unlike critiques of Eurocentric world history that engage in a checklist of comparisons to establish that other world regions were as or more “advanced” than Europe, this perspective moves such measuring exercises to the margins of analysis. Certainly social actors asserted claims about the more “civilized” or “modern” nature of “their” institutions. But the institutional order we are examining was not an exclusive cultural property but the product of an ordered and contested multiculturalism.

LEGAL PLURALISM

We do not begin the study of legal regimes without tools, but the tools need some refashioning. In legal studies, and in the anthropology of law in particular, the study of legal pluralism provides one starting place. Throughout the book I use the term legal pluralism, and also some closely related terms, while also seeking to move beyond some

9 Examples are Janet Abu-Lughod, Before European Hegemony; and, arguing that Islam constituted a cultural world system, John Voll, “Islam As a Special World-System.”
10 The claim by Frank (ReOrient) that the global economy was Asian-centered until around 1800 in this way reproduces the sorts of analytical biases that lead him to reject Eurocentered global history in the first place. See the last section of this chapter.
11 Shaping a conceptual framework must take us outside colonial history. Though the multiplicity of law in colonial settings has long been recognized, comprehensive scholarly treatments are few. The works of M.B. Hooker are an exception, though it is fair to say that they had only marginal impact on colonial studies more generally (for example, his Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws). There are many case studies and monographs on law in colonial and postcolonial settings that frame their analysis in terms of legal pluralism (see note 14 below), but the dearth of comparative works has made it difficult to place such works in a larger context. In the study of law more narrowly defined, the fields of conflict of laws, and of comity of nations, also intersect with the approach to colonial law here. In contrast to these fields, though, I focus on formal legal issues as one part of a larger set of cultural and political tensions crystallized in jurisdictional disputes.
common assumptions about the relation of multiple systems of law and, in particular, the role of state law.

Plural legal orders have more often than not been represented as comprising sets of "stacked" legal systems or spheres. In part, this approach is implicit in prominent sociological theories on law. Unger, for example, describes customary law as patterns of interactions to which moral obligations attach. The law becomes more formal as layers of greater complexity adhere to this foundation. At the pinnacle of the legal order sits state law, a system with distinctive features, including the presence of specialized legal personnel. The image of stacked or nested legal systems within or below an enveloping state law extends even to theoretical approaches to law that seek to place nonstate and state law in the same comparative context. The search to define universal features of legal systems, for example, has tended to render the plural legal order as a Hobbesian world: Each legal system coheres around a single coercive authority, and more powerful authorities subsume those that are weaker. State law caps the plural legal order through its ability to establish a monopoly on violence.13

Among the problems of these, or alternative, representations of the legal order as a set of stacked legal systems, two critiques have special relevance to the study of colonial law. One consists in the observation of rampant boundary crossing. Legal ideas and practices, legal protections of material interests, and the roles of legal personnel (specialized or not) fail to obey the lines separating one legal system or sphere from another. Legal actors, too, appeal regularly to multiple legal authorities and perceive themselves as members of more than one legal community. The image of ordered, nested legal systems clashes with wide-ranging legal practices and perceptions.14 Mapping the plural legal order thus takes on the feel of early astronomy, with its attempts to plot heliocentric orbits on an imagined geocentric solar system — what is required, ultimately, is a return to faith to account for the inconsistencies.

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12 Roberto Mangabeira Unger, Knowledge and Politics.
13 See, for example, Leopold Pospisil, Anthropology of Law, for an emphasis on coercive authority as the centerpiece of all legal systems.
14 The anthropological literature on legal pluralism in particular highlights the fluidity and contingency of the relation of multiple legal authorities. See especially Sally Merry, "Legal Pluralism" and also the more recent Colonizing Hawai'i; June Starr and Jane F. Collier (eds.), History and Power in the Study of Law; Sandra B. Burnham and Barbara E. Harrell-Bond (eds.), Imposition of Law.

15 Sally Falk Moore, for example, in a careful study designed explicitly to understand "traditional" law as the product of colonial politics, repeatedly refers to local customary law in a colonial setting as the "residue" left over after the imposition of state law (Sally Falk Moore, Social Facts and Fabrications). In Chapter 7, I analyze E.P. Thompson's views of custom, and the descent of state law, as another variant of this tradition of legal pluralism. Like Moore's approach, Thompson's views move us beyond the constraints of a plural legal order conceptualized as stacked and separate legal systems, but significant problems remain.
politics. Designing, announcing, and fighting about rules ordering the interaction of various legal authorities fashioned a place for the state as an instrument and forum for the production of such rules. In short, what some approaches would represent as a natural condition of plural legal orders – the ascendancy of state law – appears as the product of history, and of widely reproduced conflicts.

The comparative and interpretive study of these processes is at one level synonymous with the study of jurisdicational politics, a term that I define broadly to mean conflicts over the preservation, creation, nature, and extent of different legal forums and authorities. The opposition of “ruler” and “ruled” universally generated charged debates about jurisdicational politics. These debates were never two-sided, though, because multiple legal authorities on each side also asserted different sets of claims about the structure of legal authority (think of the divide between the North African mufti and peninsular Moors). The ways in which the politics of jurisdicational disputes played out were crucial to changing notions of cultural boundaries, in part because “jurisdiction” itself implied a certain sharing of identities and values among subjects. This association was not lost on social actors, who struggled purposefully to draw jurisdicational lines in ways that were consistent with their own images of group distinctions.

Many forces could bring jurisdicational disputes into sharper relief, but two stand out. One was the challenge posed by cultural intermediaries and the attendant conflicts about the place of such groups within the legal order. In jurisdicational politics, cultural intermediaries – and a particular group of them, indigenous legal personnel – aligned themselves in surprising ways, sometimes seeking to broaden jurisdicational claims of the colonizers in order to push for cultural inclusiveness, sometimes defending and reinventing “traditional” authorities as a way of protecting or creating special status. Their very presence tended to pose a challenge to colonizers’ representations of cultural and legal boundaries. Intermediaries’ place was redefined, further, in relation to shifting definitions of acts and groups placed outside the law – the illegitimates of banditry, piracy, and criminality, and the presumed lawlessness of “savages.”

A second force propelling jurisdicational politics into the foreground comprised contests over property. Conflicts over cultural difference in the law were intertwined with disputes focusing on the control of property and its legal definition. Culture and economy were not separate entities – one prior to, or determinant of, the other. Rather than developing as a “framework” for the spread of capitalism in the period we are studying, legal institutions emerged with capitalist relations of production through repetitive assertions of power and responses to power. Indeed, transformations in the law of property (including definitions of rights to land and labor) were sometimes perceived by social actors as primarily about changes in the ordering of legal authorities, rather than about property rights per se.

Together, these areas of conflict shaped a body of “rules of engagement” in the law, or a set of shifting procedural and legal rules about the relations among cultural (or religious) groups. We find these rules distributed across the law and its institutions rather than residing in one body, or one function, of the law. Colonial law had, in this sense, a peculiar subtext of rules about rule – a regulating of the regulating system. Such rules had symbolic force, but they were not merely symbolic; they constrained legal strategies and influenced perceptions of the law and thus had an impact on choices of legal sources, their interpretation, and legal practice in general. In short, the law’s structuring of cultural boundaries directly shaped its wider institutional profile.

In studying conflicts about the structure of the legal order, I rely on a simple, broad typology. Multicentric legal orders – those in which the state is one among many legal authorities – contrast with state-centered legal orders in which the state has at least made, if not sustained, a claim to dominance over other legal authorities. Rather than elaborating upon these models or arguing the degree to which various historical examples constitute faithful representations, I use the typology to explore patterns in the historical shift from one legal regime to another, the timing of this shift, and its intricacies. Other terms I employ heuristically are strong and weak legal pluralism. The first denotes legal orders in which politically prominent attempts have been made to fix rules about the relation of various legal authorities and forums. Weak legal pluralism occurs where there is an implicit (mutual) recognition of "other" law but no formal model for the structure of the legal order, or where the model is in formation. Colonial settings offer examples of both strong and weak legal pluralism, as well as cases that fall between these types.

The remainder of this introduction discusses in turn the three points of entry I have chosen for studying global legal regimes – jurisdicational politics, cultural and legal intermediaries, and changes in the law of property. The choice of these entry points does not lead me to develop a typology of plural legal orders based on patterned variations, in the
stark boundaries between conquerors and subjects in the Americas, a much more complex map of differences emerged both in discourse and in institutional structures.17

Claims of legal jurisdiction uniformly set in motion a process of cultural distancing, but the process itself varied substantially. On the one side, the meaning of jurisdiction was conditioned by the nature and rhetoric of law in the colonizing society. Imperial powers possessed legal systems that were already formally plural. This background influenced the ways in which colonial jurisdictional claims were extended. The relation to subordinate, conquered peoples was crafted in the familiar terms of structured legal pluralism that the colonizers knew. Colonized subjects perceived the possibility of using these tensions to their advantage and devised legal strategies that explicitly exploited them. The tensions of jurisdictional politics at home thus extended, with new complications, to colonial settings. In the case that Greenblatt analyzed, this dynamic was very important. Though the rhetoric of conquest established possession by the Spanish crown, the ambiguities of jurisdiction were immediately present. A second legal authority, that of the church, was recognized by both conquistadors and the crown itself, and the resulting jurisdictional tensions came to influence profoundly the functioning of colonial law in Spanish America and, in particular, the legal status of American Indians.

Indeed, jurisdictional jockeying and disputes were pervasive, and they existed within state law itself. Administrative, civil, criminal, commercial law—there was no imperial handbook about which forms of the law were best to institute first in a colonial setting. Nor, for that matter, was it predictable which mattered most to colonizers (or to political factions among them) or which potentially created most political

17 Seed improves upon Greenblatt’s approach by giving more careful consideration to the differences among five “national” legal cultures and their ceremonies of possession (Patricia Seed, Ceremonies of Possession). Like Greenblatt, though, her book focuses narrowly on first contact and not the complexities of legal rule that follow. There is a danger that Seed’s conclusion that different European powers could not “read” each other’s symbolic statements of possession might be understood to mean that they could not read each other’s legal orders. As I will argue in this book, I do not think this was at all the case, not only across European polities but also between many European and non-European polities. “Possession” and its manifestations might be an exception, but I tend to think that Seed has overstated her case, a result mainly of comparing symbolically different fields (for example, signs of legal possession in English colonies to astronomical markers of the Portuguese “known” world). I nevertheless consider the book a very valuable step in the direction of building a broader understanding of colonialism out of comparative study.
turnmoil. While we find in practice that cultural boundary marking took place across the legal order, particular sorts of law emerged as focal points of tensions in particular historical circumstances. In eighteenth-century England, for example, the criminal law became an arena for public redefinitions of class boundaries. There are analogous cases in colonial settings where shifting definitions of criminality were also central to political strategies of domination by colonial powers. But mere administrative regulations – changing requirements to sit for civil service examinations, for example – could also emerge as focal points of controversy and in turn drive legal reforms in other areas. When we analyze colonial law, we must not restrict our view to particular kinds of law but must allow wide flexibility in order to identify critical moments. The danger of comparing apples to oranges is less troubling than the possibility of concluding that legal contests that were politically marginal in one place or time were marginal everywhere.

Conquered peoples showed themselves to be quite adept and sophisticated at interpreting the significance of claims to jurisdiction and strategically taking positions to undermine those claims. As in the case of the Muslim advocate in Marbella and the mufti ruling on his obligations, groups that appeared to be politically allied often adopted quite different approaches to jurisdictional issues. Undermining claims to jurisdiction might be approached by insisting on the legitimacy of alternative legal authorities, as the mufti was doing, or they might involve entering actively into an imposed legal system, as the Marbella man wanted, to protect particular interests and, in the process, preserve community status. Either approach – and also the dialogue about which was morally superior and tactically more promising – had an impact on changes in the ordering of legal authorities. In striking either of these positions (or in combining them in some way), groups used their knowledge of jurisdictional tensions present in the imposed legal order. For example, American Indians at times showed considerable sophistication in their appeals to religious as well as state legal authorities. Or, in a very different setting, Indian Ocean merchants carefully chose among religious, administrative, or customary forums when pursuing claims in the regions where they traded.

In different historical moments, the discourse of jurisdictional disputes focused on different divisions. One striking commonality of the Iberian overseas empires and the great Islamic empires was the focus of jurisdictional politics on the relationship between religious and state law, and the boundaries separating religious communities. In the extension of these empires, political jurisdiction did not necessarily produce religious jurisdiction, and vice versa. This relationship was a volatile one acted upon by local political contests, many of which focused explicitly on questions of religious identity and the limits of imperial authority.

Contrast this focus to debates in the late nineteenth century about the nature of citizenship in colonial contexts. The discourse of jurisdictional politics shifted decisively away from religion and toward membership in particular political communities. Groups seeking to undermine colonial law often found themselves arguing for broadening, rather than restricting, state jurisdictional claims so that rights recognized under state authority could be extended more widely. At the same time, those who wished to enhance state legal authority often sought to do so by drawing jurisdictional boundaries more sharply and closely. In nineteenth-century India, whole ethnic communities found themselves defined as being outside the law – as “criminal tribes” – while in many parts of Africa colonial administrators embraced efforts to shore up, and even re-create in quite distorted forms, “traditional” law.

We should not be surprised to find that people often perceived very clearly the close connections between jurisdictional claims and messages about cultural difference. Fights broke out about seemingly arcane changes in the extension or restriction of court authority. Even if his view was narrowly focused on the discourse of possession, Greenblatt was right to point to the utterances describing jurisdictional claims as being central to cultural self-definition, and to the discourse of colonialism (and to its institutions) more generally. We need to add to this dimension the impact of these debates on actual institutional structures, some of which endured and extended beyond the particular historical conditions that gave rise to them. Jurisdictional politics in this way shaped an institutional framework linking local cultural divisions to structures of governance and, in turn, to global ordering.

CULTURAL AND LEGAL INTERMEDIARIES

In Achebe’s acclaimed novel of colonialism, Things Fall Apart, the protagonist, Okonkwo, is taken before a judge and jury, and convicted, without realizing what is happening. He is not awed by the event because he does not know it is a trial. He does not know that the presiding British official is a judge; he does not know that the twelve men brought in to listen to the exchanges in the room comprise a jury. Okonkwo’s obliviousness
may reflect Achebe’s overstatement of Ibo isolation. Still, the point is worth considering. Colonial powers sent some messages through legal institutions that were simply not received. Conquered peoples may also have ignored messages because they doubted the legitimacy of courts, or simply because they found the medium remote. Staging loud and impressive theatrical events was relatively easy for colonizers; making these displays mean what they were intended to mean was much more difficult.

The burden of translating was present in the first moments of colonial encounter. Individuals and groups were identified right away to act as interlocutors or intermediaries. While culture change reverberated through interacting societies, it was concentrated in the cultural transformation of these individuals. Within a historically short space of time – certainly less than a generation – we observe cultural practices that are products of neither “dominant” nor “subordinate” culture, but of the interaction. Further, the interpretation of these new cultural forms is not easy and cannot be deduced from a simple algebra of domination and subordination. The variety of cultural representations on the two sides is the cause of some of this complexity. So, too, is the sophistication of cultural adaptation. As an example of this complexity, Bhabha points out that mimicry of colonial rulers (or colonial elites) may signal a recognition of cultural inferiority but may also reflect the hunger to usurp power, a capacity for parody, and a sense of security that external changes will leave one’s own cultural core untainted.

In colonial law, similarly, it is tempting but wrong to view any participation in an imposed legal system as collaboration, on the one hand, and to represent any form of rejection of the law’s authority as resistance. Groups emerged almost everywhere that simultaneously “collaborated” with an imposed legal order and “resisted” its effects. The Moorish “collaborator” discussed at the beginning of this introduction is a case in point. He is also, though, atypical in some ways. Whereas he made explicit his goal of protecting the Muslim community, many intermediary groups did not pursue a clear political agenda but crafted their strategies in terms of fairly narrow individual, family, or small-group interests. If they found the law a useful forum for forwarding those interests, they also maneuvered to strengthen legal mechanisms that improved their standing in the legal system. A most interesting tension emerged when intermediaries perceived that prevailing ways of marking cultural difference would continue the conditions that made their work as intermediaries indispensable but would also inhibit changes in the law that would benefit them in other ways.

As already noted, the mere act of claiming legal jurisdiction prompted a demand for rules about the sorts of people who would be permitted to serve as witnesses, advocates, and judges, and whether they would be treated the same way or differently from others in these roles. Cultural intermediaries who took part in legal proceedings – as litigants or legal practitioners – had an immediate and apparent interest in altering these rules. At times, they were aided by popular perceptions that cultural divisions within the law were symbolic and permissive of other inequalities; at times, their maneuvering favored narrower group interests. In either case, their actions influenced the standing of indigenous courts, procedures, and sources in the legal order and changed perceptions of the legitimacy of colonial rule.

The intermediaries’ role was also both important and complex from the point of view of colonial or imperial administrators. Intermediaries were often viewed as essential to rule but at the same time dangerous and an affront to cultural divisions that ruling groups were struggling to uphold. Not surprisingly, questions about how to respond to challenges raised by these groups became the focus of political debates in many places. Debates about whether such intermediaries should be regarded as “foreign” subordinates with the power to undermine state authority or as colonial officials deserving of protection intersected with representations of cultural difference as a rationale for colonial rule.

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As with jurisdictional issues, colonial agents faced with these problems relied in part on the blueprint of metropolitan law for distinguishing among categories of legal actors, and they looked for analogous distinctions in indigenous law. For example, the value of oath taking in both imposed and indigenous law depended on a witness’s social standing and category. Colonial legal agents tried to create rough tables of equivalence of socially subordinate groups, which were in turn challenged in various ways in the courts. Roles and titles for legal advocates emerged out of a combined process of imposed order, established practice, and strategic responses of both colonial agents and indigenous litigants to opportunities for improvisation.

Perhaps most interesting about the shifting role of legal intermediaries is that their ambiguous status—as participants in the legal order who were not fully subjects of the law—prompted serious debate about the essential nature of the law itself. What were the qualities that made imposed law supposedly out of reach for colonized practitioners? Answers to this question called forth generalizations about the nature of indigenous culture and sharpened colonial officials’ claims about metropolitan law. In fact, the debates focused attention on the virtue of legal rules themselves, so that for nineteenth-century Europeans the defense of the colonial order became closely intertwined with representations of the rationality of the colonizers and their institutions. As with jurisdictional debates, such attention to the intricacies of the plural legal order ultimately reinforced the growing recognition that the colonial state was a state—an entity with the mission and authority to order and regulate all of society.

LAW AND PROPERTY, LAW AS PROPERTY

In Joseph Conrad’s novel about the fictitious republic of Costaguana—a place that has much in common with the República Oriental del Uruguay visited by Conrad in his travels—the English-descended head of the local mining concession relies on familiar logic in explaining the benefits of reviving the mine. Charles Gould tells his wife:

What is wanted here is law, good faith, order, security. Any one can declaim about these things, but I pin my faith to material interests. Only let the material interests once get a firm footing, and they are bound to impose the conditions on which alone they can continue to exist. That’s how your money-making is justified here in the face of lawlessness and disorder. It is justified because the security which it demands must be shared with an oppressed people. A better justice will come afterwards. That’s your ray of hope.

Gould’s views would not seem strange to those historians who view state institutions in general, and the rule of law in particular, as instruments of informal empire and dependent capitalist development. Exchange and profit required stability, and a certain predictability for interactions; law followed investment to provide these conditions. Access to justice for Conrad’s “oppressed peoples” was a rare and accidental byproduct of hard-to-come-by order.

For the period we are studying, there has been a marked tendency to describe global interconnectedness in terms of an increasing spread of capitalism outward from Europe and encompassing, by the end of the nineteenth century, all the regions of the world. What permitted this spread? In one version of the story, it is the diffusion of Western institutions—specifically, Western mechanisms for defining and establishing rights to property in ways that permit and stimulate the growth of markets. The rule of law emerged as part of a solution to the problem of high and volatile transaction costs. These transaction costs—the costs of “defining, protecting, and enforcing the property rights to the goods (the right to use, the right to derive income from the use of, the right to exclude, and the right to exchange)” were minimized through institutional stability, in particular the ability of the state to enforce contracts.

In another version of the story, capitalist relations of production surged ahead, bringing supportive institutions in their wake, much in the way that Gould was predicting for the hapless Costaguana.

This narrative has been loudly criticized for, among other faults, its Eurocentrism. It represents Western institutions as uniquely capable of facilitating economic growth. But the alternatives offered are saddled with their own problems. One possibility is to elaborate Marx’s concept

23 Although this is surely the more usual complaint, I think that a deeper (and related) flaw of the approach is its inadequate treatment of culture, which is represented as either a sort of mystical substratum that occasionally and for inexplicable reasons acts to impede institutional transformations, or as an aftereffect, a mere dependent variable. These contradictory representations are never resolved. The odd result is that a perspective designed to center analysis around universal, rational-choice models, resides firmly on notions of deep cultural differences that are impervious to reason. For a wider discussion of this problem in the institutionalist literature, see Benton, "From the World Systems Perspective to Institutional World History."
of the mode of production. By defining a multiplicity of noncapitalist modes of production, one can, proponents argue, represent the complexity of regions that become in some senses (or sectors) capitalist while remaining noncapitalist in other senses (or sectors). This approach, articulated most clearly in world history by Eric Wolf, transcends the pure linearity of assumptions about the necessary link between Western institutions and capitalist growth. But the end of the story—the "conquest" by capitalism of the global economy over the long nineteenth century—is surprisingly familiar. Further, the real puzzle in this perspective has proved to be the elaboration of "articulation," that is, the ways in which different modes of production are linked. They are linked—they must be linked—by patterned behaviors that have the regularity and standing of institutions, yet each mode of production is associated with a set of institutions that, in effect, constitute and defines the mode of production. Are there specific institutional arrangements that then do the work of linking these other institutional practices? No one, to my knowledge, has succeeded in building a very convincing model of this nested institutional order, to say nothing of describing its changes.

A different and in some senses opposite solution is simply to disregard institutions as secondary to economic forces and patterns—especially, in global narratives, to long-distance trade. Frank, for example, takes this view in arguing against a Western-centered account of capitalist institutions and their spread. Institutions, he argues, simply do not matter. They bend to economic forces. This view accomplishes its goal of debunking Eurocentrism. Western institutions were hardly "needed" for a global economy to develop; that economy emerged well

before the rise of what others call a capitalist global order; and where institutional environments conducive to global economic integration did not exist, they were forced into existence by integration itself. Yet, again, we are in a world of new puzzles and problems. In one direction, this path leads right into the den of the institutionalists, with their emphasis on necessary preconditions for capitalist growth. Frank finds himself arguing that the Chinese and others were just as rational as Europeans, and their institutions just as efficient and market friendly (though, if institutions do not matter, it is hard to see why we should care about this at all). In another direction, we find no tools for understanding the relation between institutional and economic change. The character of institutions is a response to economic trends, and to trade in particular; the world's economy was globally interconnected from an early stage; and it remained so, though its center shifted from China to Europe some time after 1800. In this nonnarrative narrative, the only relevant question posed about the state is whether "the state in China, Japan, India, Persia, and the Ottoman Empire" adopted, like European states, a range of policies to promote "national" economic growth (they did). But how did "the state" become an entity for which such a question is even debatable? Did increases in the volume of trade and production at a global level stimulate the formation of such an institution everywhere? If so, how far are we really from the institutionalists' suggestion that expanding trade necessitated regulation? Excise the Eurocentric claim that the model for regulation was supplied by the West, and the two approaches converge rather neatly. State formation and the emergence of an interstate order are naturalized products of accelerated globalization.

24 Eric Wolf, Europe and the People Without History.
25 Indeed, the limitations of this perspective led Eric Wolf away from a focus on articulation and toward an effort to conceptualize power and conflicts over power more broadly. See Eric Wolf, Envisioning Power: Ideologies of Domination and Crisis.
26 Unfortunately, this point, which Frank describes as "a major thesis" of his book ReOrient (p. 206), is more an assertion supported by strings of quotes from other scholars than a developed argument in the book. It does appear, though, that in his eagerness to debunk the Eurocentrism of the institutionalists, Frank throws out the baby with the bathwater. He rejects any notion of "the social embedment of the economic process" (p. 206), based narrowly, it seems, on his rejection of Polanyi. This simply returns Frank to universal rationalism (p. 223). But for a strident reminder of the Western biases inherent in this assumption, see the introduction in Marshall Sahlins, How "Natives" Think; and J.M. Blaut, The Colonizer's Model of the World: Geographical Diffusionism and Eurocentric History. For a subtler discussion of economic social embeddedness, see Mark Granovetter, "Economic Action and Social Structure: The Problem of Social Embeddedness."

27 Frank, ReOrient, p. 206.
28 A somewhat different way of framing this critique is to point out that Frank's approach, in excising Eurocentrism, implicitly adopts the rather dubious view that colonialism had little influence on institutional or economic change outside Europe. Such a view might be true for parts of Asia before the late nineteenth century, but to borrow Frank's language, a "truly global" perspective that includes Spanish America and the territories under Ottoman rule, to name just two early modern examples, would show such a view to be ludicrous. I would not be fair to Frank if I did not acknowledge that at times he seems ready to admit the greater complexity of institutional-economic interactions (though he pulls away from this characterization ultimately). For example, he cites Perlin approvingly for arguing the need to view institutional similarities across diverse world regions as comprising "a framework of relevance" for the growth of international trade and the division of labor (the phrase is Perlin's, quoted on p. 210 of ReOrient). Frank also gestures at something he calls "interdependent institutional developments" (p. 209). But he seems convinced that a perspective taking into account this global institutional framework must always view it as the product of global economic
The history of colonial and postcolonial state formation has hardly played along with this script. The process is historically messy and uneven. The state never constituted simply “more of the same,” a larger and more elaborate institutional conduit for trade. It acted not just to regulate exchanges of property but also to enforce definitions of property and, as Foucault pointed out in somewhat different terms, to define a site for the accumulation of rules about property and social identities. And these functions of the state — the operation of which was itself the object of continual controversy — were not automatic and uncontested. The replication of state institutions was in fact shaped by the continual juxtaposition of alternatives.

Without making claims that the politics of legal pluralism determined shifts in political economy (a claim I do not want to make), we can grasp through its study the intersection between major reorganizations of the plural legal order and significant changes in the distribution and definition of property rights. The fluidity of jurisdictions in the plural legal order of the early modern world helped to structure the division of resources and constituted a framework for the “articulation” of different ways of organizing labor and property. This legal regime was fundamental to the expansion of long-distance trade, which was organized by communities of traders with distinctive legal identities. As colonial claims and the density and variety of economic interactions expanded, the outlines of this plural legal order also changed. Yet a formal attachment to pluralism persisted. Colonial legal policy relied on familiar categories in distinguishing between property disputes that were central to colonial interests and should therefore be handled in courts dominated by colonizers, and property transfers that could be properly viewed as familial, religious, or culturally specific and could safely be relegated to other forums. But the divisions of personal law were unwieldy for these purposes. Seemingly irrelevant cases of inheritance or marriage property could quickly become crucial to the production of labor, revenue collection, or the regulation of land markets. At the same time, local institutional practices sometimes offered opportunities for capital accumulation that colonial agents sought to preserve. Local (indigenous and settler) elites who stood to benefit from changes in the law of property often ran ahead of colonial administrators in advocating a greater role for the colonial state in regulating property transactions of all kinds. Others sought advantage in the preservation (and invention) of alternative, autonomous, or “indigenous” practices for organizing rights to land and labor. This jockeying over alternative visions of the plural legal order contributed to the formation of the colonial state as an arbiter of internal boundaries.

These transformative conflicts were sometimes perceived by social actors as primarily about broad questions of group rights, rather than more narrowly about access to, and definitions of, property. This perception resulted not from some sort of false consciousness on the part of social actors unable to “see through” the shallowness of group distinctions to the “deeper” economic forces with which they should have concerned themselves. Precisely because group boundaries were marked by the institutional structuring of the legal order, they mattered very much in determining various groups’ access to economic resources and opportunity. In addition, “public” positions, including most legal posts, were bought and sold according to the access they provided to “private” gains. It is unclear to me why we, as historians, should promote a stark division between identity and interests when contemporaries insisted on their congruence — and when the political/legal structure of multiple authorities and overlapping functions reinforced this understanding. Indeed, social actors often logically viewed legal status itself as a form of property, that could rise or fall in value and that could be inherited or usurped.

This book addresses contests over property and its definition only as they intersected with the politics of legal pluralism. The intention is to avoid altogether the “chicken and egg” question about which came first, institutional change or the global economy. Instead, I propose the

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On the intersection of property conflicts and identity politics, or the social “embeddedness” of property, see C.M. Hann, “Introduction: The Embeddedness of Property,” in C.M. Hann (ed.), Property Relations: Renewing the Anthropological Tradition.

In a different context, critical race theorists have proposed that racial identity can itself be legally constituted as a form of property. See Richard Delgado, Critical Race Theory. Note that in Plessy v. Ferguson, the 1890s case in which the United States Supreme Court upheld the right of states to pass segregation legislation, the lead attorney for the plaintiff argued that “the reputation of being white” was a form of property “in the same sense that a right of action or of inheritance is property.” Whites would, he contended, be dispossessed if categorized as nonwhite (Albion Tourgée’s Plessy brief, quoted in Mark Elliott, Race, Color-Blindness, and the Democratic Public).

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interconnections. In this regard, I think he simply misreads the very quote from Perl in he provides, which seems to argue just the opposite, viz., that institutional similarities “formed part of the preconditions for the development of a system of international exchanges and dependencies” (p. 210). But I do not mean to argue causality. Focusing on this question leads us away from investigating interconnections and to the sort of grandstanding that so pervades Frank’s efforts.
politics of legal ordering as the missing process of "articulation" that both structured long-distance trade across economically and culturally diverse polities and contributed to the replication of a hierarchy of specialized institutions regulating taxation, production, and trade. The approach moves us away from a narrative of the "spread" of institutions and toward the study of the conditions and conflicts producing the structurally similar institutional environments that constituted the global economy.

CULTURE/STRUCTURE

It should by now be evident that one of the central themes of the book is to contribute to the movement to resurrect "culture" as an element of global "structure." This objective goes further than the demand that agency be reintroduced into structural theory, though the importance of this move should not be discounted. Assuming that the reader is by now convinced of the centrality of cultural identities to legal politics (an assertion to be supported, too, by the case studies of this book), let me be more specific about the ways in which legal politics has shaped global ordering.

Three elements of international order emerge out of contests over the shape of the legal order. The first, already alluded to, involves the location of political and legal authority. Institutional regimes (broadly defined as the repetition of structurally similar ways of organizing authority) make international regimes (narrowly defined as interstate agreements) possible by allowing political authorities to identify one another. Political authorities make assumptions about the similarities in the constitution of power inside other polities. These assumptions are rarely wholly wrong. They emerge out of long historical interactions in many cases. They also are the products of analogies based on a locally produced understanding of the structure of political conflict.

31 Frank writes that the anthropologist Sidney Mintz has cautioned him for decades that "culture matters," and he has always replied that "structure matters" (Frank, ReOrient, p. xvi). Condensed in this way, my message would be that culture and structure both matter. This is by no means a lonely position. For other projects aiming at incorporating culture into global theory, see, in international relations, Yosef Lapid and Friedrich Kratochwil (eds.), The Return of Culture and Identity in IR Theory; in anthropology, Jonathan Friedman, Cultural Identity and Global Process; and in sociology, Manuel Castells, The Power of Identity.

Empires and emerging states recognized in each other similar strategies for dealing with cultural pluralism, captivity, religious differences, and frontier societies. The Iberian and Islamic empires constituted in this sense a single institutional framework, despite substantive differences in religious, economic, and political organization. It was not a framework that sustained peace, but it facilitated a long history of exchanges of ideas, personnel, and goods in the significant interludes of peace along the borders. In this way, too, the colonial state later emerged as part of an international state system not because it was created to do so but because colonial conflicts molded it into an overarching political authority with recognized claims to territorial sovereignty, however limited and fragile. In both phases of world history, the internal dynamics of challenges to legal authority and changing political schemes to craft a stable plural legal order were crucial in molding the character and reach of political authority and in making it intelligible to outsiders.

A second way that reproducing political and legal contests shaped an international order was by creating a framework in which culturally distinctive groups could maneuver across polities. Curtin has already demonstrated the vital role that trade diasporas of culturally distinctive peoples played in international interactions from the ancient through the early modern periods. This protagonism was made possible in many cases by the ability of such groups to find a footing in "foreign" territories. By demanding legal recognition and protection wherever they operated, such groups themselves constituted a unifying force. The legal frameworks within which they operated established institutional routines for recognizing their "otherness" and permitting some scope for alternative political legal authority to operate. Such institutional patterns laid the groundwork for cross-regional ties that in many cases expanded into much more substantial economic and cultural connections. As states emerged everywhere as the imagined apex of political and legal authority, the protagonism of culturally different groups waned, though in time the space for limited alternative autonomy came to be claimed by other transnational groups and processes.

The third connection to international order exists in the ongoing process of interpreting cultural difference. Individuals and corporate groups crossing the borders of one legal sphere into another – from

32 Philip Curtin, Cross-Cultural Trade in World History.
the lands of Christendom, for example, into Muslim territories, or into trading entrepôt cities of Africa and Asia – depended on their hosts’ or enemies’ abilities to understand and calculate the benefits of interaction. Once begun, interactions produced routines that generated, if not trust, at least firm expectations about behavior. Missionary activities, formal exchanges of prisoners, informal sponsorship of prohibited trade across religious borders, the migration and hiring of technical personnel across borders – indeed, conversion itself, as a ritualized form of border crossing – these and other patterns formed the basis for an uneasy trust that permitted other more open forms of exchange, including expanded long-distance trade. Within limits, imbalances in exchanges could be regarded with a certain “studied ignorance.” The belief in the possibility of fairness undergirded order in the absence of an overarching political authority.

But behind mutual tolerance always lay the possibility of conquest, the threat of rebellion, and the danger of mass conversion. Where they occurred, these forces recast both the distribution of power and its discourse. Where they did not occur, they were ever-present possibilities of disorder and had to be anticipated without, at the same time, undermining the framework for peaceful cross-border exchanges. This contradiction in the institutional order between flexibility and pluralism, on the one hand, and hierarchy and command, on the other, was itself another element of social life that created a certain continuity across borders. In practical terms, the contradiction amounted to a widely shared ability of polities to view other groups and political authorities as being “inside” their own political domain – as tolerated minorities with legal standing to be different, as subordinate entities with legally subordinate status, or even as unwelcomed conquerors whose superior force required adaptation and resistance. For the early empires, borders did not stand for the limits of the world but designated a category of people – those beyond the borders – as potential insiders rather than permanent outsiders. Put differently, the organizing force of centralized political authority acted much like the state in later periods in that existing patterns of

governance became the blueprint for governance even where authority was exercised weakly if at all.

Further, the internal similarities of the constitution of power in many places meant that where conquest did occur, adjustments could be made by both conqueror and conquered without a sense of utter surrender to superior force or to the exigencies of rule. To recognize the prevalence of accommodation is not to suggest that conquest did not do fundamental violence, or that resistance was negligible. It does help us move beyond the dichotomies of collaboration and resistance, though, to see colonial struggles as connected to both indigenous patterns of conflict and the factionalism of colonizing powers. It was precisely the ability of participants to interpret the politics of the other in familiar terms that allowed them to alter their own behavior and institutions to accommodate differences. This process occurred even in places that had little historical opportunity to learn about one another. Lockhart, for example, points out that the Spaniards and the Nahuas of central Mexico had in many ways “more in common than either did with the other peoples of the hemisphere.”

The many ways in which political and legal similarities facilitated conquest and colonization in most places – not by producing order, exactly, but by generating a framework for conflict – become clearer when one compares them to places where there was no such fit. The British, for example, were notorious failures at making sense of the political structure of Iboland in eastern Nigeria. Consecutively disruptive policies were answered by continual revolt and, in response, the admission of failure in the form of government-sponsored anthropological expeditions sent to sniff out the “true” location of Ibo political authority. More famously, the response of Hawaiian islanders to Captain Cook’s appearance was not to analogize to discover the nature of British political power but to fit British representatives into local cosmology as well as the circumstances permitted. Unfortunately for Cook, this meant killing him.

Political homology, then, was neither inevitable nor universal. Where it did occur, it did not come out of “cultural understanding,” or from

33 See my discussion of Pierre Bourdieu’s use of this phrase and its relevance to law in Chapter 7.
34 This logic builds upon the analysis of E.P. Thompson in explaining the willingness of eighteenth-century plebeians to submit to the rule of law. E.P. Thompson, Whigs and Hunters. For a discussion of the connection of this argument to the structuralist critique of Bourdieu, see Benton, “From the World Systems Perspective to Institutional World History” and Chapter 7 below.
35 Even where the state is not intrusive, social actors are aware of its existence and consider it at least a potential authority, so they tend to behave as if the state were in fact regulating their behavior. For an expansion of this argument in relation to the regulating functions of the modern state, see Benton, “Beyond Legal Pluralism.”
36 James Lockhart, The Nahuas After the Conquest, p. 5. Greenblatt, in Marvelous Possessions, makes the same point.
37 Sahlins, How “Natives” Think.
universal techniques or tendencies of reason, but from similarities in the structural dynamics of conflicts that created certain shared expectations. And it came out of the determination of participants to view their social world as a single entity, with internal distinctions and borders but with no room for permanent outsiders. Hegemony was, in this sense, both a social force and a map of the world.

CONCLUSION

The contested historical movement from truly plural legal orders to state-dominated legal orders is the subject of this book. The analysis of disputes about jurisdiction and the rules of group interaction in law move the focus from seemingly small conflicts – the difference of opinion, say, between a Marbella Muslim and a North African mufti – to legal cases that were widely regarded as defining the very nature of dominion. The aim of shifting the scale and scope of analysis from individual legal cases to broader patterns of colonial rule, and to international shifts, is to show the connection between particular legal conflicts over jurisdictional boundaries and larger (global) institutional shifts. The result is an intentional juxtaposition of microhistories and macrohistorical argument.

Each of the book’s chapters pairs an overview of legal change in colonial contexts with analysis of specific legal cases. The approach risks offending regional specialists. Though I resist claims about the representativeness of the particular conflicts selected for study, the cases were chosen because they illustrate more pervasive tensions. I selected them by a process of narrowing: learning about larger legal and political trends and searching for records of cases that distilled widely diffused conflicts. World historians will, I hope, appreciate the importance of demonstrating the interconnections between small conflicts in particular historical settings and the revision of “master narratives” about global change, at the same time that they will recognize that a narrative produced by this method can hardly aspire to being comprehensive.

In addition to replicating a case study approach, each chapter focuses on a particular dynamic of legal politics and cultural change. Chapter 2 argues that jurisdictional fluidity was a consistent feature across diverse regions of the South Atlantic world. By forming a framework for the relation of communities in diaspora to host polities, the fragmented nature of the legal order supplied a known context for cross-cultural interactions. The next chapter shifts analysis to places where conquest brought more decisive claims of legal authority over culturally different subject populations. Rather than resolving tensions inside imposed legal orders, conquest and colonization often exacerbated those tensions, a point illustrated through discussions of the legal status of religious minorities in the Portuguese and Ottoman empires, and by the more detailed analysis of a particular case study of jurisdictional conflict in the Spanish colonial borderlands.

The fragmented legal order and the conflicts it generated tended to promote the institutional “fix” of rising colonial state power. This process was halting and only indirectly the result of planning. Chapter 4 analyzes cases from India and Africa to show the ways in which legal jockeying helped to create a space for the colonial state, even before such an entity formally existed. Policies promoting a structured legal pluralism brought challenges that in turn drew the state into a leading role in ordering multiple legal authorities, producing implicit and at times explicit claims for legal hegemony. Developing this theme further, Chapter 5 turns to cases in which only a weak pluralism was established. Here, too, we can identify a mid-nineteenth-century shift toward a state-centered legal order and more expansive claims of sovereignty. The shifting treatment of the Khoi in South Africa and the Aborigines in Australia shows that this change responded in no small part to the entanglement of seemingly separate issues, viz., the legal status of indigenous peoples and of subordinate factions of European settlers. Finally, Chapter 7 examines the impact of extraterritoriality on the legal construction of sovereignty in the nineteenth century in areas of informal empire. Paradoxically, foreigners’ claims to immunity from national law tended to reinforce pressures for the creation of state-centered legal orders. In different ways, these three chapters support the argument that legal conflicts in the long nineteenth century contributed to the formation of a global interstate order.

A fortuitous, and not entirely accidental, byproduct of the book is to provide historical perspective for considering some of the disruptive forces of global politics in our own time. Cultural and religious factions have been neatly constrained by the nineteenth-century model of state-centered legal pluralism to choose among unsatisfying political alternatives: to press weak claims for sovereignty; pursue narrow, rights-based legal challenges; trade autonomous governance for civic- or status-based associations; or seek control over the state apparatus in an attempt to resurrect nonstate moral or religious authority. In response, the choices of supporting repression, on the one hand, or seeming to
endorse a fragmenting parochialism, on the other, are deeply disturbing and limiting. By revealing modern state-centered legal pluralism as historically recent and contingent, we may perhaps help to make space for other frameworks that would allow for greater legitimacy for alternative political authorities without threatening the rule of law. Such an act of imagination may be forced upon us by challenges to traditionally defined states across the globe. But it may be helpful to begin by contemplating historical examples of “orderly disorder” as a way of preparing ourselves for the future.

In the public bathhouses of Castilian towns established in the course of the Reconquest, simple attendance served as a reminder of legal identity. Women and men went to the baths on different days, and Jews and Muslims also had designated days. A bathhouse dispute or crime might come to the attention of one of four local legal authorities—the town magistrate, rabbi, qadi, or priest—depending on the gravity of the offense and the day it occurred. Conflicts among co-religionists would be handled by their communities’ own judges; for Christians, these would be secular magistrates, unless the Christians had blasphemed or committed some other crime against the faith, in which case the clergy might step in. If a Muslim or Jew committed a serious crime, secular authorities were likely to assert a claim to jurisdiction. Most Castilians perhaps understood only in broad terms where to locate these jurisdictional boundaries, but they must have perceived clearly, even in the simple rituals of bathing, that they lived in a world of divided jurisdictions and that these divisions represented fundamental differences among them. Many Castilians knew, too, that neither the cultural and religious, nor the legal, boundaries were fixed. Crossing was not easy, but there were routines for doing so, from the weightier matter of conversion to the commonplace legal maneuvering that could be used to move a dispute to a more sympathetic forum.¹

Historians’ attention to the narrative of rising state power in Western Europe has tended to obscure the degree to which this fluidity of the

¹ On the schedules and rituals of bathhouses in towns of the Reconquest, see Heath Dillard, Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300, p. 152.