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978-0-521-70743-5 - A Search for Sovereignty: Law and Geography in European Empires, 1400-1900

Lauren Benton

Excerpt

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## I

## Anomalies of Empire

In his geographical treatise of 1537, the Portuguese cosmographer Dom João de Castro explained that it would be possible to correlate all newly discovered lands with astronomical markers to produce an accurate map of the world. The result would be, he wrote, a “true and perfect geography.”<sup>1</sup> The movement toward this vision, from the cartographic revolution of thirteenth-century portolan charts to the use of surveying to map colonial territories in the nineteenth century, is a compelling narrative of the rationalization of space, and of the reinforcement of this trend by the pursuit of European imperial interests.<sup>2</sup>

<sup>1</sup> Quoted in Armando Cortesão and Avelino Teixeira da Mota, “General Introduction,” in *Portugaliae Monumenta Cartographica*, ed. Armando Cortesão and Avelino Teixeira da Mota, (Lisbon: Imprensa Nacional-Casa da Moeda, 1960), 1:xvii.

<sup>2</sup> This narrative is presented piecemeal in works spanning the history of cartography, historical geography, colonial studies, and the literature of empire. In early colonial history, there has been a consistent emphasis on the erasure of the spatial understandings of non-Europeans; the best example remains J. B. Harley, “New England Cartography and the Native Americans,” in *The New Nature of Maps: Essays in the History of Cartography*, ed. Paul Laxton (Baltimore: Johns Hopkins University Press, 2001), 169–96. In the construction of high colonialism, mapping is considered a reinforcement of social control; for example, see Matthew H. Edney, *Mapping an Empire: The Geographical Construction of British India, 1765–1843* (Chicago: University of Chicago Press, 1997). The general argument about an association between the transition to Cartesian representations of space and European empire is presented in Robert David Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986), chap. 2. Bruce McLeod mines literary texts to emphasize connections between the management and manipulation of space in empire and the movement toward planned and geometrically regular spaces associated with social control in England. *The Geography of Empire in English Literature, 1580–1745* (Cambridge: Cambridge University Press, 1999), chap. 5.

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This narrative needs to be placed alongside the history of imperfect geographies and the production in empire of variegated spaces with an uncertain relation to imperial power. Territorial control was, in many places, an incidental aim of imperial expansion. While an iconic association with empire is the pink shading of British imperial possessions in nineteenth- and early twentieth-century maps, that image, and others like it, obscures the many variations of imperial territories. Empires did not cover space evenly but composed a fabric that was full of holes, stitched together out of pieces, a tangle of strings. Even in the most paradigmatic cases, an empire's spaces were politically fragmented; legally differentiated; and encased in irregular, porous, and sometimes undefined borders. Although empires did lay claim to vast stretches of territory, the nature of such claims was tempered by control that was exercised mainly over narrow bands, or corridors, and over enclaves and irregular zones around them.

Maritime empires represented this pattern most clearly, with their networks of sea lanes connecting dispersed settlements or trading posts. But territorial expansion in Europe also occurred through the creation and protection of corridors and enclaves. The pattern extended to overseas reconnaissance, influenced settlement strategies, and helped shape systems of colonial rule. Imagining and enlarging empire sometimes appeared synonymous with efforts to gather information about corridors of control, including mapping and describing ocean passages, river networks, merchant roads, and other travel routes. Enclaves such as missions, trading posts, towns, and garrisons were strung like beads along interconnected corridors. These imperial outposts coexisted with other kinds of enclaves, including areas of partial or shared sovereignty within larger spheres of influence or rule. Such zones might form when peoples or polities fended off formal conquest, bargained for a measure of autonomy, or courted rival imperial sponsors for protection. Colonial powers found reasons to create semiautonomous spaces that were legally and politically differentiated from more closely controlled colonial territories. Together these patterns and practices produced political geographies that were uneven, disaggregated, and oddly shaped – and not at all consistent with the image produced by monochrome shading of imperial maps.<sup>3</sup>

<sup>3</sup> The emphasis on corridors and enclaves is consistent with a view promoted in other recent histories of European empires as webs or networks. My interest in the legal qualities of corridors and enclaves differs slightly in shifting attention from the movement of

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Law represented a particularly important factor in the social construction of this variegated colonial world. Legal cultures traveled with imperial officials, merchants, sailors, soldiers, sojourners, settlers, captives, and even pirates – agents in empire who positioned themselves as subjects and often as representatives of distant sovereigns while interacting with locals and representatives of competing empires. Travelers’ actions extended the reach of the law, helped to form new political communities, promoted challenges to imperial designs, and created variations of familiar legal practices. The administration of empire depended, meanwhile, on the exercise of delegated legal authority. This layered quality of imperial rule spawned contests over the prerogatives of officials, the definition and rights of subjects, and the articulation of colonial administration with the law of indigenous or conquered peoples. Together, these dimensions of imperial sovereignty – the portability of subjecthood and the delegation of legal authority – generated territorial variations. On one level, they contributed to the patterning of corridors and enclaves; delegated legal authorities extended their control over enclaves and the areas around them, while the movement of subjects left its own spatial imprint along networks of travel, trade, and provisioning. On another level, a fluid legal politics surrounding subjecthood and authority produced further variations within and across corridors and enclaves. A graphic representation of imperial power more accurate than the standard, multicolored maps would show tangled and interrupted European-claimed spaces and would represent, perhaps in colors of varying intensity, the changing and locally differentiated qualities of rule within geographic zones.

It is tempting to interpret such patterns as merely temporary formations on the way toward more evenly expansive territorial rule and settled sovereignties. But to do so is to project backward in time the post-nineteenth-century idea that territoriality was not just one element

goods and people through these webs and focusing on their place within the processes of imagining and constructing sovereignty. In merging these mainly compatible perspectives, it is helpful to refer to Kerry Ward’s observation that the “nodes and networks” of empire had a “modular” quality deriving from an “incremental development of imperial sovereignty.” *Networks of Empire: Forced Migration in the Dutch East India Company* (New York: Cambridge University Press, 2008), 56, 60. On webs and networks composing European empires, see also Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560–1660* (New York: Oxford University Press, 2008); David Hancock, *Oceans of Wine: Madeira and the Emergence of American Trade and Taste* (New Haven, CT: Yale University Press, 2009).

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of sovereignty but its defining element.<sup>4</sup> Although control of territory formed an important part of early modern constructions of sovereignty, European powers often asserted and defended imperial dominion on the basis of strategic, symbolic, and limited claims while recognizing the incomplete and tentative nature of more expansive spheres of influence. Some legal practices, including rituals defining subjecthood and acts controlling criminality, had only an indirect relation to dominion over territory. Transitions to modern statehood in the long nineteenth century did not eliminate patterns of territorial unevenness.<sup>5</sup> Even – or especially – in polities advancing very explicit programs of territorial expansion and consolidation, new kinds of differentiated legal zones dotted the landscape. Their creation was a function of the routine operations of empire rather than the result of persisting, older irregularities.

The problem of bringing sovereign and territorial claims into alignment was a familiar one within Europe, and historians have recently begun to retell the history of sovereignty in European nation-states as a contingent and stubbornly incomplete process.<sup>6</sup> The search for sovereignty in empire presented some of the same problems, while also marking imperial sovereignty as distinctive in some ways and, at times, as especially elusive.<sup>7</sup> *Dominium*, most commonly thought of as the right to possess

<sup>4</sup> A fuller discussion of treatments of sovereignty is presented in Chapter 6.

<sup>5</sup> Here and elsewhere in the book where I refer to a *long century*, I am following Fernand Braudel's practice of using the convention to recognize continuities that disturb the usual periodization by century. Braudel's long sixteenth century stretched from about 1450 to 1640. Depending on the region and the trends being analyzed, some long centuries are longer than others. Most historians, for example, would define the long nineteenth century as the period from about 1780 until the beginning of World War I but would label the long eighteenth century as extending from roughly 1680 to about 1840 (British historians sometimes attach the precise dates of 1688 and 1832). I will provide a range of years when the dates are important to the topic under discussion; otherwise when I refer to a long century, the phrase should be taken to signify a period from several decades before the beginning of a century to several decades after its end.

<sup>6</sup> See especially recent writings on the Treaty of Westphalia that question its significance as a turning point in the development of territorial control as an integral element of modern sovereignty. For example, Stéphane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden: Martinus Nijhoff, 2004).

<sup>7</sup> Charles Maier argues that European imperial sovereignty differed from sovereignty within Europe precisely because empires depended not on the integrity of frontiers but on "the continuing manifestation of power" required to keep out rivals. *Among Empires: American Ascendancy and Its Predecessors* (Cambridge, MA: Harvard University Press, 2006), 101. We should note that some of the irregularities of imperial sovereignty can be explained by the high costs and communications problems posed by rule over distant territories. Certainly technological advances and the consolidation of colonial bureaucracies

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territory, and *imperium*, associated with sovereign jurisdiction, remained imprecisely defined, especially in relation to one another, for a long time.<sup>8</sup> Territorial variations meanwhile resulted from conflicts over which legal instruments and prerogatives extended into which portions of empire and under whose local authority. Did all or some of metropolitan legislation apply? Did monarchs hold the same or greater authority overseas as in their immediate realms? Could new law, or novel interpretations of old law, issue from colonial officials or courts? Answering such questions often required imagining sovereignty as a divisible quality whose component parts could be apportioned in various combinations.<sup>9</sup> Imperial officials and legal writers found that the problem of configuring sovereignty could not be addressed separately from pragmatic and theoretical questions arising from the entanglements of local legal politics and the challenges of interimperial contests.

Recognizing the spatial variations of imperial sovereignty helps us to amend our understanding of the changing structure of the global legal regime. The history of international law has tended to be narrated as a shift from natural to positive law, beginning with the arguments of jurists in the sixteenth and seventeenth centuries about the centrality of natural law principles in regulating interimperial relations and leading to the

did change the possibilities for even distribution of effective imperial authority. But there is clearly more to the story than communications and cost constraints, and a focus on legal communications tends to encourage an emphasis on variations among empires, while I am more interested in exploring patterns of variation within imperial formations. On legal communications as a lens for viewing differences among empires, see Kenneth J. Banks, *Chasing Empire across the Sea: Communications and the State in the French Atlantic, 1713–1763* (Montreal: McGill-Queen's University Press, 2002); Richard Ross, "Legal Communications and Imperial Governance: British North America and Spanish America Compared," in *The Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 104–43.

<sup>8</sup> *Imperium* was often used as a synonym for sovereignty, while *dominium* was sometimes used more narrowly than defined here to designate lordship or property and sometimes more broadly to convey a vast domain that was claimed but not controlled. The definitions adopted here are not designed to be precise. Like *sovereignty*, whose shifting definition is discussed especially in Chapter 6, *dominium* and *imperium* were employed strategically, and their meanings in discourse on empire were influenced by changing definitions in domestic politics. David Armitage views "the problem of uniting *imperium* and *dominium* . . . as the fundamentally and ultimately combustible dilemma at the core of British imperial ideology." *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 94 (see also 93–4, 96–8, and 122–4).

<sup>9</sup> I will have much more to say about divisible sovereignty later. A valuable starting place for considering its role in European empires is Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002).

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emergence, in the long nineteenth century, of a concept of international order based on law formed through the agreements of separate sovereign polities.<sup>10</sup> Exploring the complexities of imperial sovereignty challenges this narrative at many levels. First, the irregular thrust of imperial jurisdiction into extra-European space can be viewed as giving rise to an interimperial legal politics in which participants, even while invoking natural law principles, imagined a broader regulatory order shaped by legal practices and institutions replicated across empires.<sup>11</sup> Put differently, a modified positivism, deriving not from legislation or from agreements among polities but from proliferating practices and shared expectations about legal processes, stretched across the centuries of European imperial expansion and rule. Patterns of legal variation, including “anomalous legal zones,” formed a pervasive and persistent element of this global legal order.<sup>12</sup> Second, the continued existence of empires into the long

<sup>10</sup> My efforts to complicate this narrative build on the work of other scholars who have identified problems in the standard account and offered other corrections. See Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2007); Keene, *Beyond the Anarchical Society*; David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007); Casper Sylvest, “The Foundations of Victorian International Law,” in *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2007), 47–66.

<sup>11</sup> For an argument about the simultaneous invocation of natural law principles and positive law in international law of the late eighteenth century, see Armitage, *The Declaration of Independence*, chap. 2. Most accounts emphasize treaties as the central element of interimperial legal ordering; I do not ignore treaties but wish to give more prominence to other, more decentralized ways in which mutual recognition of imperial legal authority developed.

<sup>12</sup> I adapt this phrase from Gerald Neuman, “Anomalous Zones,” *Stanford Law Review* 48, no. 5 (1996), 1197–1234. Neuman treats “anomalous zones” as areas in which fundamental norms of law have been suspended, and this condition is expanded to create additional legal deviations. His examples span from the anomalous voting regime of Washington, D.C., to Guantánamo Bay as a place of suspended rights for prisoners. I explore similar examples, in particular penal colonies, in Chapter 4, but I use the term more capaciously throughout this book to refer to areas within empires that present a range of legal variations, not always connected to the suspension of norms. See Chapter 6 in this volume and also Lauren Benton, “Constitutions and Empires,” *Law & Social Inquiry* 31 (2006), 177–98. Note that Radhika Singha employs “anomalies” and “legal anomaly” to characterize the results of British attempts in colonial India to appeal to religious norms and traditional authority while implementing legal policies designed to affirm their subordination to imperial law. *A Despotism of Law: Crime and Justice in Early Colonial India* (New York: Oxford University Press, 1998), 82, 85. I investigate the interrelation of colonial legal anomalies and understandings of global order.

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nineteenth century disturbs the narrative of a forming international legal regime. We can learn about how to analyze global legal norms and their transformation in the nineteenth century and after by analyzing earlier interimperial engagements and cross-imperial discourses. This history leads us to pay attention to elements of a shared legal repertoire rather than search for early signs of differentiated, national styles of rule. And by tracing the origins of and changes in conventions for referring to areas of partial, contested, or shared sovereignty, we become better able to identify variants of those conventions in later periods.

Geographic tropes featured prominently as a shorthand way to describe some of the spatial variations of imperial law. In somewhat haphazard and decentralized ways, a fluid discourse about geography urged associations between physical properties and qualities of law and sovereignty. Descriptions of geographic elements such as rivers, oceans, islands, and highlands were creatively combined with discourses about law and with reports about patterns of legal practice. Through repetition, the process formed widely circulating conventions – ways of communicating, often indirectly, odd and enduring links between landscapes (or seascapes) and law. In response to a range of influences, particular geographic tropes became symbolically more central to imperial pursuits in certain periods. Both metropolitan observers and agents in empire meanwhile sought to characterize the singular geographic features and anomalous legal qualities of parts of empire. Charles Maier has argued that the “overarching spatial imagination” of the long twentieth century was a strong “territorial imperative.”<sup>13</sup> Five centuries of earlier European imperial projects seem to betray no single overarching spatial imagination – unless we understand territorial variation itself as an organizing

<sup>13</sup> Maier perhaps exaggerates the power of territoriality as an organizing principle of the century, particularly if one considers the continued creation of spaces of uneven sovereignty such as the quasi-sovereign enclaves of the late nineteenth century analyzed in Chapter 5 of this volume and discussed by Frederick Cooper in “Globalization” in *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 91–112. But Maier should be credited for his efforts to identify an imperative within a historical period “to keep its political institutions and its images of the physical world in some sort of congruence.” “Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era,” *American Historical Review* 105 (2000), 807–31. Saskia Sassen’s attempt to incorporate territoriality in a narrative of global change is less successful; she represents medieval territorial “assemblages” and imperial geographies as mainly precursors to the emergence of national political economies. *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006).



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rubric and recognize the inherent lumpiness of imperial formations as its animating feature.<sup>14</sup>

As European imperial projects in successive periods tended to invoke particular geographic tropes to describe patterns of partial and uneven sovereignty, multiple contexts influenced these trends. Interimperial relations appear to have been especially influential. From the fifteenth through the seventeenth centuries, as European powers jockeyed over claims to commercial influence in undefined regions, they drew on a shared repertoire of Roman law and emphasized the strategic location of settlements, trading posts, garrisons, and other symbols marking occupation or supporting claims to possession. Riverine regions formed the spine of passageways to imagined rich, interior realms, and sea lanes threaded together commercial networks. The middle decades of the eighteenth century brought an intensification of interimperial competition over global spheres of influence and new regional markets, a conjuncture that stimulated greater attention not only to territorial boundaries but also to strategic points, especially islands, along maritime corridors of control. In the middle and late nineteenth century, as the turn toward territorial empire coincided with the rise of a concept of state sovereignty linked to the exercise of control over bounded space, global rivalries focused more closely on the consolidation of rule and the construction of ordered, if complex, imperial bureaucracies. One result was to bring into sharper relief the theoretical and practical problems posed by mountainous enclaves of supposedly primitive and semiseparate legal administration set within more closely controlled colonial territories. Another was to call into question the project of imagining international law as a force capable of eclipsing empire as a unit of global governance.

An active legal politics of agents in empire also motivated particular strategies for referencing geography. We can observe a peculiar homology between the lived experience of individual Europeans and their descriptions of law and geography. Representations of travel as a sequence of scenes, impressions, and encounters corresponded with the legal imagination of imperial corridors. Residence in enclaves colored understandings of the exercise and reach of delegated legal authority, while also corresponding to understandings of empire as an assemblage of discrete and

<sup>14</sup> This insight might be extended chronologically and expanded methodologically as the basis for rewriting global history, as Cooper proposes in advocating “coming to grips with the lumpiness of power and economic realtions and the way such asymmetries shifted over time.” “Globalization,” 101.



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often widely separated locations. Sojourners and settlers tended to describe landscapes they encountered in ways that affirmed or enhanced their own interests and prerogatives.<sup>15</sup> Reconciling “odd” colonial and “normative” metropolitan law was one aspect of this project, but this distinction was one among many ways of differentiating legal zones.<sup>16</sup> Encounters with locals were clearly very important influences on ideas about nature and assessments of the constraints on the extension of authority. European jurists responded directly to particular problems in interimperial relations and in the process struggled to make sense of legal and territorial variations within and across empires. Anomalous legal spaces of empire emerged from the combination of such processes and presented new challenges to the project of defining imperial sovereignty and establishing its relation to emerging global law.

This chapter lays the groundwork for chronologically ordered case studies of the interrelation of geographic discourse, colonial legal politics, and international law in the production of imperial space between the years 1400 and 1900. It does so by exploring some similarities in the ways that epistemology and experience converged within European geographic and legal imagination, particularly in the early phases of overseas expansion. The first step is to reexamine a prominent and seductive narrative about the progressive rationalization of space in an increasingly interconnected world. European empires were both experienced and imagined as a congeries of repeating but irregular places, and modes of gathering geographic knowledge contributed to this effect. In addition to sponsoring programs of mapping, Europeans accumulated geographic knowledge through itineraries or “tours” and through the collection of thick descriptions of discrete locations, often filtering both kinds of information through legal reports or in connection with legal cases. Law formed an important epistemological framework for the production and dissemination of geographic knowledge, while geographic descriptions encoded ideas about law and sovereignty.

<sup>15</sup> In using the term *sojourners* here and throughout this chapter, I am drawing on Alan Karras’s discussion of Scots in the Atlantic world. Karras notes that many Europeans considered themselves transients in empire; they moved frequently and planned ultimately to return. *Sojourners in the Sun: Scottish Migrants in Jamaica and the Chesapeake, 1740–1800* (Ithaca, NY: Cornell University Press, 1992), chap. 1.

<sup>16</sup> The legal tensions between centers and peripheries have received most attention from historians as an element of spatial and legal differentiation within empire. See Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens: University of Georgia Press, 1986).

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There is something logical and perhaps even comforting about a narrative of European empire as generating a slow but steady rationalization of space. Periodic advances in techniques of navigation and mapping, a persistent focus on geographic boundaries as elements of treaty making between imperial rivals, and the accumulation of geographic knowledge of conquered and colonized territories by the colonizers – these trends operate in both older and more recent imperial histories as intimately bound up with the construction of imperial power. Mapping features in this telling as both a technology in the service of empire and a metaphor for the colonial project of mastery through the accumulation and control of knowledge.<sup>17</sup>

This narrative has many virtues. We see that in the early centuries of European colonization, cartographic advances both permitted and were stimulated by imperial claims to vast territories that could be demarcated by lines of latitude and longitude with increasing precision. An early and often-cited example of a sharpening sense of territoriality and its related advance, a conceptual flattening of mappable space, is the 1494 Treaty of Tordesillas, which divided the world into Portuguese and Spanish spheres of influence on either side of a line running between the poles at a distance of 370 leagues from the Cape Verde Islands.<sup>18</sup> The Portuguese in particular have been described as European colonizers who associated the new imperial claims with heavenly markers, using astronomical references to define the scope of their dominions.<sup>19</sup> The Spanish empire engaged multiple bureaucracies in the collection and interpretation of geographic

<sup>17</sup> This section addresses one aspect of what is obviously a much broader literature merging history and geography. See Alan R. H. Baker, *Geography and History: Bridging the Divide* (Cambridge: Cambridge University Press, 2003).

<sup>18</sup> The line is marked on the map in Figure 3.1. Disputes over Portuguese and Spanish claims to the Molucca Islands and in the South Atlantic later focused in part on which island should be the starting place for measuring the 370 leagues to the west. See Jerry Brotton, *Trading Territories: Mapping the Early Modern World* (London: Reaktion Books, 1997), 122–159; Charles E. Nowell, “The Loaisa Expedition and the Ownership of the Moluccas,” *The Pacific Historical Review*, 5:4 (1936): 325–336; and W. Rela, *Portugal en las exploraciones del Río de la Plata* (Montevideo, Uruguay: Academia Uruguaya de Historia Marítima y Fluvial, 2002), 139–68.

<sup>19</sup> Jorge Cañizares-Esguerra, *Nature, Empire, and Nation: Explorations of the History of Science in the Iberian World* (Stanford, CA: Stanford University Press, 2006), chap. 4; Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640* (Cambridge: Cambridge University Press, 1995), chap. 4.