A Search for Sovereignty

Law and Geography in European Empires, 1400–1900

A Search for Sovereignty maps a new approach to world history by examining the relation of law and geography in European empires between 1400 and 1900. Lauren Benton argues that Europeans imagined imperial space as networks of corridors and enclaves, and that they constructed sovereignty in ways that merged ideas about geography and law. Conflicts over treason, piracy, convict transportation, martial law, and crime created irregular spaces of law, while also attaching legal meanings to familiar geographic categories such as rivers, oceans, islands, and mountains. The resulting legal and spatial anomalies influenced debates about imperial constitutions and international law both in the colonies and at home. This original study changes our understanding of empire and its legacies and opens new perspectives on the global history of law.

Lauren Benton is Professor of History and Affiliate Professor of Law at New York University. Her book *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge University Press, 2002) won the Law and Society Association's James Willard Hurst Book Prize, the World History Association Book Prize, and the PEWS Book Award from the American Sociological Association.

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CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org
Information on this title: www.cambridge.org/9780521707435

First published 2010

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Benton, Lauren A.
A search for sovereignty : law and geography in European Empires, 1400–1900 /
Lauren Benton.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-521-88105-0 (hardback) – ISBN 978-0-521-70743-5 (pbk.)
1. Law and geography – Europe – History. 2. Europe – Boundaries – History.
3. Sovereignty. I. Title.
KJC1337.B46 2010
341.4′2–dc22 2009015844

ISBN 978-0-521-88105-0 Hardback
ISBN 978-0-521-70743-5 Paperback

For my mother,
Charlotte Russ Benton,
with love and appreciation

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Preface and Acknowledgments

Several years ago, I mentioned to a friend that I had started working on a book about the history of European perceptions of oceans. I said it would take me only a year or two to research and write. I had come to this topic after reflecting on historians' reluctance to probe critically the spatial dimensions of early modern empires. We seemed often to assume that empires and states aspired to establish political and legal control over discrete, bounded territories. I thought we needed to learn more about how Europeans imagined unbounded, distant geographies and much more about the varied legal practices they relied on to project sovereignty into those spaces.

The sea seemed a logical place to begin. By definition, there could be no territorial control of the oceans, at least not in the ways conventionally imagined. This observation had already informed histories of the sea as a space trending from lawlessness to regulation under emerging international law. But it seemed to me that the usual narratives shifted attention away from the concerted efforts of empires to extend authority into the oceans, a process often carried out by mariners operating more or less on their own, beyond the range of close imperial oversight. To explore the history of the disorganized projection of imperial control over the oceans, I began by poring through accounts by and about pirates to find out whether and how even rogues might have acted as conduits of law. The good news, I soon realized, was that many of my hunches were borne out. Pirates held deeply entrenched ideas about the law and acted on them, even in the midst of seemingly lawless raiding. And there was plenty of evidence linking their legal strategies with the policies of European empires as they sought to extend their influence over trade routes,

sea lanes, and ports. It was even more intriguing that mariners' perceptions of the sea as a space of interconnected passageways closely matched ideas about the extension of imperial jurisdiction into ocean space along narrow bands imaginatively marked by the passage of ships. Crisscrossed by legal corridors and dotted at their edges by competing colonial jurisdictions, the smooth oceans appeared to be legally very lumpy. The bad news – though perhaps I can now acknowledge that it was more good news – was that the story I wanted to explore turned out to be not "just" about oceans. If Europeans were beginning to identify parts of oceans as distinctive kinds of legal spaces through travel, and in contests over privateering and piracy, then it stood to reason that European imperial pursuits were producing other uneven legal geographies. It was important to understand these patterns to grasp the puzzles facing imperial officials, colonial polities, sojourners, settlers, conquered subjects, merchants, jurists, lawyers, and others engaged in struggles to define, establish, and challenge sovereignty in empire. A diverse array of actions and interpretations was shaping an interimperial legal regime whose contours did not always fit comfortably within past and present accounts of the foundations of international law.

I could see that exploring associations between geography and law would produce a story in tension with several familiar and seductive narratives in world history. One narrative portrays European expansion as acting to further the rationalization of space. Another story depicts the gradual consolidation of a global order based on agreements between political units enjoying territorial sovereignty. In both tales, the consolidation of empires appears as a force working to flatten space and to corral law into conventionally defined jurisdictions. Instead, I was finding repeating sets of irregularly shaped corridors and enclaves with ambiguous and shifting relations to imperial sovereignty. To trace the origins and significance of these fragments, I would have to explore a chronologically and spatially wider array of points of intersection between geographic imagination and imperial legal practices.

I wanted, of course, to draw connections between law and geography from the sources rather than to concoct associations out of theory or make educated guesses. After investigating pirates and jurisdiction at sea, I delved into early voyage chronicles from fifteenth- and sixteenth-century expeditions in the Atlantic world. In rather short order, an interesting and surprising correlation emerged. European sponsors and chroniclers were especially focused on rivers as the points of entry and pathways to trade and settlement in Africa and the New World, an observation that

historians had sometimes noted in passing but rarely investigated in detail. As they moved through river regions, expeditions followed a familiar pattern of becoming embroiled in internal disputes; with surprising frequency, rivals devised and then broadcast accusations of treason. I began to understand these charges as part of a complex legal politics of subjecthood in early European settlements, a process that blended preoccupation with imperial claims and anxieties about membership in colonial political communities.

As I pursued this odd but illuminating association between dangerous upriver regions and treacherous colonial legal politics, I began also to read the accounts of colonial officials from later periods and other places, keeping an eye out for fresh connections, however quirky, between geographic discourse and legal practices tied to claims of sovereignty. Another story soon jumped off the pages: descriptions of hill and mountain regions depicted them as legally archaic places, and as zones of primitive sovereignty. This association had a long pedigree but attracted new attention in the context of late nineteenth-century efforts to define discrete, interior enclaves within colonies and to characterize them as areas of partial sovereignty. From hill country, I moved to consider the peculiar representations of islands in the context of intensifying interimperial competition in the late eighteenth century, when the imagination of islands became closely linked to the perceived utility and constitutional dangers of martial law. The representations of hill country and islands as particular kinds of legal spaces took me to British and Spanish imperial archives, where I investigated case studies highlighting problems associated with the peculiar and enduring lumpiness of imperial legal space.

As I thought about the definitions of sovereignty associated with these uneven configurations, I also pondered the implications of this perspective for an understanding of debates about international law and narratives about the origins and structure of a global legal regime. I used the material about geographic imagination and legal practices in empire to take a fresh look at some familiar texts and concepts within European legal writings. My earlier book on comparative colonial law had adopted a world history approach and had focused especially on the relation between imposed and indigenous law; there were good reasons to make this project on geography and law in empires similarly global in scope and to continue to study legal pluralism, this time from another angle. But there were more compelling reasons for limiting my analysis to European, and especially British and Spanish, empires, and for placing indigenous legal actors within the analytic framework but not at its center. I would then be able

to examine more closely the discursive pairings of geography and law, and the relation of practices meant to mark and sustain sovereignty with metropolitan understandings of sovereignty. The dangers of producing a Eurocentric study seemed to me to be outweighed by the benefit of being able to trace the influence of a shared repertoire of (especially) Roman and canon law and to follow links between the fluid politics of empires and the texts of European jurists, including some of the leading figures in the history of international law: Gentili, Grotius, Bentham, Maine, and others. These writers responded very directly to the challenges of cataloging spatial and legal variations, and in the process they recognized inter- and intra-imperial legal politics as sources of international law.

The task of interweaving geographic discourse, legal politics, and international law turned my optimism about writing a quick book into a private joke. It also made the process of research and writing enormously entertaining and rewarding. Thankfully, I was able to benefit at every stage from the insights of many other historians. In my first full year working on the project, I had the good fortune to participate in a reading group at the School of Law at New York University. Meeting weekly, the International Law in Times of Empire group discussed a series of authors and problems, nearly all of which turned out to be relevant to the topic of territoriality in empire. I am grateful to the conveners, Benedict Kingsbury and David Armitage, and to the participants, especially Jane Burbank, Benjamin Straumann, Lisa Ford, Charles Beitz, and Jennifer Pitts, for discussions that helped me shape my ideas about the research in its earliest stages. The NYU History Department has been a wonderfully congenial intellectual home. In Atlantic history, Karen Kupperman and Nicole Eustace have offered bibliographic leads and insights on many occasions. I am lucky to have as colleagues Jane Burbank and Fred Cooper, who generously shared their ideas about imperial political imagination with me as they worked on an important book about empires in world history. Many other NYU historians responded promptly to my queries or commented on parts of the manuscript, including Thomas Bender, Zvi Ben-Dor Benite, Manu Goswami, William Klein, Sinclair Thomson, Joanna Waley-Cohen, Barbara Weinstein, and Larry Wolff. At the NYU School of Law, the Legal History Colloquium provided a stimulating forum for discussing draft chapters, and I benefited from the detailed constructive criticism provided by William Nelson and Daniel Hulsebosch. I made good progress on the book while in residence as a Fellow at the Shelby Cullom Davis Center at Princeton University, where

Gyan Prakash added to his duties as acting director by commenting on sections on India. Other opportunities to present parts of the book-in-progress were very valuable to me and are too numerous to list. With the sad certainty that I am forgetting the names of some scholars who extended invitations, contributed insights, or just provided moral support, I would like to thank Jeremy Adelman, David Armitage, Brian Balogh, Jerry Bannister, Christopher Bayly, Craig Buettinger, Christina Burnett, Paul Corcoran, Clifton Crais, Antonio Feros, Roquinaldo Ferreira, Lisa Ford, Eliga Gould, Alan Greer, Alexander Haskell, Peter Hoffer, Alan Karras, Amalia Kessler, Rande Kostal, Michael LaCombe, Peter Lake, Mark Mazower, Adam McKeown, Christian McMillan, Joseph Miller, Matthew Mirow, Peter Onuf, Brian Owensby, Carla Rahn Phillips, Richard Ross, Linda Rupert, James Scott, Rebecca Scott, Richard Sher, Aaron Slater, Miranda Spieler, Philip Stern, Taylor Stoermer, David Tanenhaus, Aparna Vaidik, Martine van Ittersum, Christopher Warren, and John Witt. I am indebted to Kären Wigen for reading the full manuscript carefully, offering invaluable advice, and not minding when I failed to take all of it. At Cambridge University Press, Frank Smith and Eric Crahan expertly guided the book's progress from the time it was just a notion to its completion. I thank Jerusha Westbury and Paul Sager for helping to organize the bibliography and illustrations, and Patricia Mouzakitis for expertly handling many small tasks related to the project.

Working on this book has been, in surprising ways, a real pleasure, and I give most of the credit for that to my family and friends. Victoria and Gabriela Garcia were disappointed when they learned the book would not be all about pirates, but it has taken long enough to write that they (unlike some historians) matured past the infatuation-with-pirates stage and rallied to encourage me, while also making sure that I stopped to have some fun. Eduardo Garcia steadfastly reminded me that I should take the time to get it right. Sustenance in the form of hilarious running commentary was provided by Susan Field, Stefanie Dimeo, Cristina Paul, Doris Sher, Janet Sabel, Cleo Kearns, and Deborah Gaines. I enjoyed strangely enlightening conversations with George Field about the similarities of legal fragments in empire and fragments of matter at the edges of the galaxy. In Princeton, London, Hunstanton, Pasadena, and Nashville, Sandy Solomon and Peter Lake endured detailed updates in between shared laughter and over good food. And, while traveling more widely than some of the global sojourners I write about, Charlotte Benton cheered me on as she has always done. The book is dedicated to

her, in appreciation of her contagious, lifelong love of language, travel, and learning.

Parts of the following articles have been reprinted with permission: "From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870–1900," *Law and History Review* 26 (2008): 595–620; "Empires of Exception: History, Law, and the Problem of Imperial Sovereignty," *Quaderni di Relazioni Internazionali* (2007, December): 54–67; "Spatial Histories of Empire," *Itinerario* 30 (2006): 19–34; "Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism," *Comparative Studies in Society and History*, Vol. 47, no. 4 (2005): 700–724.