

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.”¹ 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.²

¹ 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.

² 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.

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.³

³ 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

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).

of sovereignty but its defining element.⁴ 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.⁵ 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.⁶ 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.⁷ *Dominium*, most commonly thought of as the right to possess

⁴ A fuller discussion of treatments of sovereignty is presented in Chapter 6.

⁵ 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.

⁶ 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).

⁷ 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

territory, and *imperium*, associated with sovereign jurisdiction, remained imprecisely defined, especially in relation to one another, for a long time.⁸ 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.⁹ 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.

⁸ *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).

⁹ 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).

emergence, in the long nineteenth century, of a concept of international order based on law formed through the agreements of separate sovereign polities.¹⁰ 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.¹¹ 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.¹² Second, the continued existence of empires into the long

¹⁰ 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.

¹¹ 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.

¹² 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.

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.”¹³ Five centuries of earlier European imperial projects seem to betray no single overarching spatial imagination – unless we understand territorial variation itself as an organizing

¹³ 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).

rubric and recognize the inherent lumpiness of imperial formations as its animating feature.¹⁴

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

¹⁴ 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,” *IOI*.

often widely separated locations. Sojourners and settlers tended to describe landscapes they encountered in ways that affirmed or enhanced their own interests and prerogatives.¹⁵ 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.¹⁶ 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.

¹⁵ 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.

¹⁶ 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).

Corridors and Enclaves

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.¹⁷

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.¹⁸ 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.¹⁹ The Spanish empire engaged multiple bureaucracies in the collection and interpretation of geographic

¹⁷ 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).

¹⁸ 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.

¹⁹ 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.

information about empire.²⁰ The British used lines of latitude to mark the northern and southern boundaries of chartered British colonies in North America.²¹ In general, maps proved to be valuable, and perhaps essential, political tools both in interimperial controversies over the extent and location of extra-European claims and in intrainperial efforts to consolidate authority and erase the presence and counterclaims of indigenous peoples.²²

These new ways of staking claims over distant and vast territories – according to the narrative of a progressive rationalizing of space – initiated a process that continued to advance with improved mapping techniques. The association of bounded territory and empire became sharper over the course of the long eighteenth century. By the middle of the nineteenth century, geographic information was clearly established as one of an array of categories of knowledge that played a dual function of making strange landscapes subject to control and rendering them as property – one sense of *dominium*. In this account, imperial mapping functioned as a panopticon writ large, a means for constructing authority through observation. Examples offered in support of this part of the story include the massive undertaking of the Triangulation Survey of British India in the middle decades of the nineteenth century and the reproduction of techniques of land surveying elsewhere in the British Empire in support of the commodification of land along settlement frontiers.²³ By the time political tensions had begun to focus on boundary disputes between various colonial holdings, the relation between bounded territory and political control was taken for granted, so that the very definition of

²⁰ María M. Portuondo, “Cosmography at the *Casa*, *Consejo*, and *Corte* During the Century of Discovery,” in *Science in the Spanish and Portuguese Empires: 1500–1800*, eds. Daniela Bleichmar, Paula De Vos, Kristin Huffine, and Kevin Sheehan, 57–77; and *Secret Science: Spanish Cosmography and the New World* (Chicago: University of Chicago Press, 2009).

²¹ See Sack, *Human Territoriality*, chap. 2.

²² For example, J. B. Harley, “New England Cartography and the Native Americans”; and “Rereading the Maps of the Columbian Encounter,” *Annals of the Association of American Geographers* 82, no. 3 (1992), 522–36. And on the legal meanings of mapping within a discourse on possession, see Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006).

²³ Edney, *Mapping an Empire*; John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal: McGill-Queen’s University Press, 2006). See also Sudipta Sen, *Distant Sovereignty: National Imperialism and the Origins of British India* (New York: Routledge, 2002).

empire had come to be associated with its mappable extent. In this way, the coloring of the British empire on maps became both a tool of political discourse and an iconic representation of the empire.²⁴

Taken together, these observations, and the detailed studies that underlie them, compose a story of territoriality and empire as developing in tandem, along a path that was largely linear. This story is set within a broader narrative of globalization over the same centuries. The concept of globalization has a relatively unexamined but implicit spatial dimension. One expected element is a telescoping of space as the histories of distant regions came into increasingly close relation. Some scholars associate the resulting collapse of space and time with the annihilation of barriers to capitalist expansion. Another powerful but implied spatial element of globalization is the emergence of “the global” as a new scale of human society. The emergence of the global has been variously situated in the late fifteenth century, with the first mapping of the world in the form of a globe; in the sixteenth and seventeenth centuries, with the creation and expansion of global trade networks; in the eighteenth century, with Enlightenment conceptualizations of knowledge and physical systems; in the nineteenth century, with the multiplication of truly global circuits of labor and capital; and in the twentieth century, with the potential eclipse of the nation-state by transnational cultural movements and economic institutions.²⁵ Such spatial renderings of globalization are

²⁴ See, e.g., Jeremy Black, *Maps and History: Constructing Images of the Past* (New Haven, CT: Yale University Press, 1997), 58. Edney cites by way of analogy the Borges story about the imperial mapmaker who was called on to make increasingly accurate maps until he finally rendered a map that simply reproduced the kingdom to scale. See Edney, *Mapping an Empire*, 1, 337. For studies of British representations of empire’s “empty spaces,” see D. Graham Burnett, *Masters of All They Surveyed: Exploration, Geography, and a British El Dorado* (Chicago: University of Chicago Press, 2000); Felix Driver, *Geography Militant: Cultures of Exploration and Empire* (Oxford, U.K.: Blackwell Publishers, 2001); and Patrick Brantlinger, *Rule of Darkness: British Literature and Imperialism, 1830–1914* (Ithaca, N.Y.: Cornell University Press, 1988).

²⁵ On late fifteenth-century globes and globalization, see Jerry Brotton, “Terrestrial Globalism: Mapping the Globe in Early Modern Europe,” in *Mappings*, ed. Denis Cosgrove (London: Reaktion Books, 1999), 71–89; on the birth of the global in the sixteenth century, see Dennis O. Flynn and Arturo Giráldez, “Cycles of Silver: Global Economic Unity through the Mid-Eighteenth Century,” *Journal of World History* 13 (2002), 391–427 and Saskia Sassen, *Territory, Authority, Rights*; on the imagination of global systems in the eighteenth-century Scottish Enlightenment, see Clifford Siskin, *Blaming the System: Enlightenment and the Forms of Modernity* (Chicago: University of Chicago Press, forthcoming); and Jonathan Sheehan and Dror Wahrman, “Matters of Scale: The Global Organization of the Eighteenth Century” (paper presented at “Geographies of the Eighteenth Century: The Question of the Global,” Indiana University, May 19–22, 2004).

not dependent on the earlier historical narrative of a flattening of space through imperial and colonial expansion, but it is easy to see how the two approaches inform each other. The conceptualization of the global was made possible by representations of distant territories as knowable spaces, while the transcendence of space by market forces assumes at least a logical progression from exploration to conquest, to integration, and to exploitation.²⁶

Several ways of complicating and even challenging this story of spatial rationalization in empire are already in view. Historians have noted, for example, that the precision of new coordinates for marking imperial space was matched by the uncertainties of how to recognize the boundaries on the ground and water, and by the relative ignorance of vast territories that were not yet mapped.²⁷ The Treaty of Tordesillas, for example, provided an awkward guide to sorting out Iberian claims on the other side of the globe, an especially difficult task without accurate measures of longitude.²⁸ This indeterminacy meant that instead of settling interimperial claims the treaty created new tensions. Similarly, in British North America, the northern and southern boundaries of chartered colonies trailed off into unmapped and contested country to the west. The promise of a straightforward linear extension of territorial claims was foreclosed both by Indian agency and by the impermanence

For a sophisticated account of many strands of globalization across the long nineteenth century, see C. A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons* (Malden, MA: Blackwell, 2004). Frederick Cooper notes the diversity of arguments about the origins of globalization in the historiography on empire. “Empire Multiplied,” *Comparative Studies in Society and History* 46 (2004), 247–72.

²⁶ Denis Cosgrove argues that representations of the globe “have constructed and communicated the distinctive Western mentality that lies behind the universalist claims of contemporary globalism.” *Apollo’s Eye: A Cartographic Genealogy of the Earth in the Western Imagination* (Baltimore: Johns Hopkins University Press, 2001), x. For a monograph that argues forcefully for a strong link between geographic representation and political power, see Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (Malden, MA: Blackwell, 2004).

²⁷ For an especially interesting study showing the ways in which the dearth of knowledge about inland territories reinforced imperial powers’ focus on the control of maritime and coastal spaces, see Dale Miquelon, “Envisioning the French Empire: Utrecht, 1711–1713,” *French Historical Studies* 24, no. 4 (2001): 653–677. And for discussion of this point in a different colonial period and setting, see Nuria Valverde and Antonio Furtado, “Space Production and Spanish Imperial Geopolitics,” in Bleichmar, *Science in the Spanish and Portuguese Empires, 198–215*, 209.

²⁸ Brotton, “Terrestrial Globalism”; Nowell, “The Loaisa Expedition and the Ownership of the Moluccas.”

of demarcating a boundary along the ridge of the Appalachian Mountains to separate settler lands from Indian country – a boundary that was difficult to locate and impossible to police.²⁹ In general, the specificity of geometric coordinates was set against indeterminacy, so that even the most seemingly precise boundaries were contingent and open to interpretation. The importance of this condition is not that it somehow diminished the value of mapping but that it made the relation between imperial order and geographic information inherently unstable.

Also obvious and important as a response to the coupling of empire and the rationalization of space is the critique that the formulation is Eurocentric. The history of mapping global empire between 1400 and 1900 is one that privileges classical influences on European cartography and advances made possible by Western technological change. Recent research documents the rich cartographic traditions of the Muslim and Asian worlds and suggests that cartographic conventions crossed porous borders between world regions.³⁰ Studies of European mapping in the early colonial world have permitted a greater appreciation of the influence of indigenous representations of geography on imperial mapping.³¹ Historians have also recently insisted on expanding the study of geographic knowledge beyond a focus on mapping to include a wider array of narrative elements used to collect and convey geographic knowledge, with the incorporation of information from diverse groups, including non-Europeans.³² Closer attention to the geographic imagination of

²⁹ Eric Hinderaker and Peter C. Mancall, *At the Edge of Empire: The Backcountry in British North America* (Baltimore: Johns Hopkins University Press, 2003); D. W. Meinig, *The Shaping of America: A Geographical Perspective on 500 Years of History*, vol. 1 (New Haven: Yale University Press, 1986).

³⁰ See J. B. Harley and David Woodward, eds., *The History of Cartography*, vol. 2, bk. 1, *Cartography in the Traditional Islamic and South Asian Societies*, and vol. 2, bk. 2, *Cartography in the Traditional East and Southeast Asian Societies* (Chicago: University of Chicago Press, 1992, 1995).

³¹ Harley discusses this point using examples from the colonial Americas in “Rereading the Maps of the Columbian Encounter.”

³² Ricardo Padrón perceptively notes that an emphasis on mapping in the Spanish Empire has shifted attention from cultural discourses about space and geography developing outside mapping. Oddly, such discourses took on greater importance as a result of the Spanish crown’s close control over the production and dissemination of maps in empire. Ricardo Padrón, *The Spacious Word: Cartography, Literature, and Empire in Early Modern Spain* (Chicago: University of Chicago Press, 2004), 9, 21. See also Rolena Adorno, *The Polemics of Possession in Spanish American Narrative* (New Haven, CT: Yale University Press, 2007); Ralph Bauer, *The Cultural Geography of Colonial American Literatures: Empire, Travel, Modernity* (Cambridge: Cambridge University Press, 2003); Andrew Hadfield, *Literature, Travel, and Colonial Writing in the English Renaissance, 1545–1625* (Oxford: Oxford University Press, 2007).

indigenous peoples has suggested that their sense of territoriality was often not so radically different from that of European settlers.³³

Such findings have helped to frame more nuanced assessments of the ways that Europeans invoked existing geographic categories in imagining “new” worlds. John Gillis has argued that islands were an important ingredient in the imaginary construction of the Atlantic well before regular cross-Atlantic voyaging brought knowledge of a sea of islands in the Atlantic.³⁴ Barry Cunliffe proposes a grammar of regional geography that Atlantic Europeans shared and that informed their engagement with the wider Atlantic world: together with islands, dangerous coasts and estuaries composed a trilogy of regional types out of which reconnaissance strategies and overseas settlement patterns were formed.³⁵ As these authors acknowledge, the lexicon of geographic tropes was available to Europeans from their own religious, literary, and scholarly traditions, and sojourners drew on this symbolic repertoire selectively, and in different combinations, in response to colonial conditions and encounters.³⁶ For example, the idea of the desert, with its biblical and classical associations, took on new meanings in the context of eighteenth- and nineteenth-century imperial expansion.³⁷ Changing representations of geographic elements within and outside Europe did not always match, of course. Landscape painters in Europe, for example, were beginning to portray the seacoast as a more domesticated place and a site of leisure at the same time that stories in circulation about the high seas proclaimed the peculiar dangers of escalating maritime violence.³⁸

³³ For example, see Nancy Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York: Oxford University Press, 2004), chap. 1.

³⁴ John Gillis argues that islands long continued to be a central organizing category for understanding imperial space, supplanted only in the transition to land-based empires of the nineteenth century. *Islands of the Mind: How the Human Imagination Created the Atlantic World* (New York: Palgrave Macmillan, 2004).

³⁵ Barry Cunliffe, *Facing the Ocean: The Atlantic and Its Peoples, 8000 BC–AD 1500* (Oxford: Oxford University Press, 2001), chaps. 1–2.

³⁶ In his rich study of European cultural associations with landscape, Simon Schama notes the “surprising endurance through the centuries” of landscape myths and memories. *Landscape and Memory* (New York: Vintage, 1995), 15.

³⁷ Donald Worster sees it as the organizing trope of western U.S. imperial projects. *Rivers of Empire: Water, Aridity, and the Growth of the American West* (Oxford: Oxford University Press, 1992). See also Patricia Nelson Limerick, *Desert Passages: Encounters with the American Deserts* (Albuquerque: University of New Mexico Press, 1985).

³⁸ See Alain Corbin, *The Lure of the Sea: The Discovery of the Seaside in the Western World, 1750–1840* (Berkeley: University of California Press, 1994); and Philip E. Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001).

Lived experience, too, played an important role in determining when and how Europeans would invoke familiar geographic tropes. As Carter has argued in relation to the records of Captain James Cook's voyages, the perception of space as an element unfolding before the traveler's gaze merged geography and storytelling in Europeans' accounts. Points along travel routes corresponded to moments within a sequence of events. Carter describes naming as the activity that most clearly blended the ambition of geographic mastery with the production of a kind of knowledge inseparable from movement through space, producing what Carter calls a "traveling epistemology" in which names represented points of arrival and departure. Cook, for example, changed the hopeful name Endeavour Bay, given on his ship's first arrival in New Zealand, to Poverty Bay after the HMS *Endeavour's* violent encounter with Maoris there.³⁹

We can draw from these insights in noting other processes that lead us to amend the story of the rationalization of space in empire. Both in sojourners' experiences of space and in the production of knowledge about distant geographies, Europeans adapted old strategies and created new ways of describing territory as differentiated, fragmented, and uneven. The experience of travel as movement along passages to discrete locations corresponded to ways of making sense of new landscapes and conveying information about them. In contrast to the rationalization of space through progressively accurate mapping, this project emphasized a set of repeating geographic features and, within this grammar, attention to distinctive qualities, the oddities or singularities of the specific case. Rather than producing the image of blank territories that could be known and dominated, this parallel process insisted that some parts of the world, and even integral parts of empire, might resist categorization or control.

Consider the contrasts and connections between spatial perceptions of maps and tours.⁴⁰ Accounts of voyages took the form of tours, purposeful blends of individual, eyewitness testimony, political reporting,

³⁹ Paul Carter, *The Road to Botany Bay: An Essay in Spatial History* (London: Faber and Faber, 1987), 31, 15.

⁴⁰ Michel de Certeau discusses the contrast of maps and tours, drawing on research reported in the 1970s on New York City with respondents who were asked to describe their apartments. The research shows that while some people in describing a particular space tend to draw maps, a larger group of people convey geographic knowledge in the form of a tour. Asked about the layout of an apartment, for example, they describe the sights encountered in moving from one room to another. *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 2002), 118–21. Padrón, in *Spacious Word*, explains that such perceptions of space based on sensory experience informed "itinerary maps" or "way-finding maps" (55, 58).

and cataloguing of nature. In following courses marked by coastlines, rivers, mountain ridges, ocean currents, and island chains, chronicles presented the natural landscape in the form of passageways that were also objects of potential imperial control. Just one example, all the more interesting because it appears in a relatively obscure account, is provided by the Dominican friar Gabriel Salazar in describing part of his trip in 1620 through the southeastern Maya lowlands:

I left Guatemala and turned right onto Lake Izabal, where I took a canoe at Xocolo and, following the coast, arrived at Tzoite. . . . I came and entered the town of Xibun. . . . From here I entered Çactan, and from Çactan entered Chinamit, both being on lagoons and rivers of saltwater. From Chinamit, they took me by water to what is an inlet of an arm of the great lagoon. From there, going through the ranch of Pedro Hernández, I came to Bacalar. All this was by canoe. As you know, then I came to the city of Mérida, and from there to Campeche there was always a range of hills on my left-hand side.⁴¹

As with the rest of Salazar's voyage, reported in the form of an itinerary, it would be difficult even now to map this sequence of moves. Yet the geographic references were not without meaning; they supported Salazar's claims to eyewitness authority, traced a route connecting markers of Spanish presence ("the ranch of Pedro Hernández," "the city of Mérida"), and served as a guide to future travelers.⁴²

Stopping places and destinations punctuated imperial corridors. The voyage chronicle, with its underlying narrative of movement along passageways, had its corollary in the descriptions and visual representations of discrete locations. Widely produced views of settlements and ports, and the plans of fortifications at strategic places along trading corridors, formed another kind of repository for knowledge about the

⁴¹ S. Gabriel Salazar, "Brief Description of the Manché: The Roads, Towns, Lands, and Inhabitants," in *Lost Shores, Forgotten Peoples: Spanish Explorations of the South East Maya Lowlands: Chronicles of the New World Order*, ed. Lawrence H. Feldman (Durham, NC: Duke University Press, 2000), 22–54, 34.

⁴² Both local guides and European travelers tended to organize geographic information around significant events along routes. In the early modern Atlantic, Indians and Europeans appeared to share understandings of the landscape as intelligible through the tracing of past events (see Shoemaker, *A Strange Likeness*, chap. 1). The geographic markers might even overlap in memorializing episodes of violence between Indians and Europeans. Consider another example from Salazar's journal summarizing the accomplishments of his voyage in relation to the murder by Indians of another Dominican friar: "I had traveled up the river to where died Friar Domingo de Vico. . . and those who go upstream just as those who go downstream can take their bearing and meet where Father Friar Domingo died, a three-day journey from Cobán" (53–4, in *Lost Shores*).

extra-European world. Sponsors of overseas ventures commissioned collections of town or harbor views modeled on the island books (*isolarios*) produced for Mediterranean navigation, in which individual islands appeared as “disconnected from all spatial markers except for a scale and a compass rose.”⁴³ Elements of the tradition influenced the Spanish imperial project of *Relaciones Geográficas*, thick descriptions of Spanish imperial regions in response to questionnaires, including both sketch maps and prose accounts of landscape, governance, and settlement patterns.⁴⁴ The newly prominent subfield of descriptive geography and a related genre, chorography, provided an epistemological framework for representations of empire as a set or series of discrete locations.⁴⁵ Together with notions circulating within literary, religious, and popular cultural circuits about the properties of particular kinds of geographic sites, chroniclers could rely on an emerging lexicon of descriptive geographic categories: familiar and seemingly universal elements such as harbors, forests, rivers, mountains, hills, coasts, and islands.

⁴³ On chorography and city views, see Richard L. Kagan and Fernando Marías, *Urban Images of the Hispanic World, 1493–1793* (New Haven, CT: Yale University Press, 2000), chap. 1. On the development of the *isolario* in the Mediterranean region and the broader influence of representing islands as “self-contained . . . worlds,” see Cosgrove, *Apollo’s Eye*, 90–95; quotes from 94.

⁴⁴ Padrón, in *Spacious Word*, points out that many of these maps fit the pattern of way-finding maps, which were often referred to not as maps but as sketch maps or drawings. He identifies a Spanish term, *croquis*, for this genre of sketch maps (55, 76–7).

⁴⁵ On the connections between descriptive geography and ideas about early English empire, see Lesley B. Cormack, *Charting an Empire: Geography at the English Universities, 1580–1620* (Chicago: University of Chicago Press, 1997), chaps. 4–5. Cormack also traces the influence of studying geography on a generation of men involved with overseas ventures; in early seventeenth-century England, many of the men involved in the promotion of empire had studied descriptive geography and chorography at Oxford and Cambridge. In the Spanish world, cartographic projects reflected an emphasis on local description and knowledge about pieces of empire. The maps produced as parts of the *Relaciones Geográficas* were of microregions, and the project was conceptually related to the long-standing interest of the Spanish crown in producing accurate views of cities in the empire. See Barbara E. Mundy, *The Mapping of New Spain: Indigenous Cartography and the Maps of the Relaciones Geográficas* (Chicago: University of Chicago Press, 1996). On the production and style of views of Spanish cities, see Kagan and Marías, *Urban Images*. On the role of descriptive geography in merging and then supplanting cosmology (as a discipline based on classical learning) with the collection of knowledge through observation, see María M. Portuondo, “Spanish Cosmography and the New World Crisis,” in *Más allá de la leyenda negra: España y la revolución científica*, eds. William Eamon and Víctor Navarro Brotóns (Valencia, Spain: Instituto de Historia de la Ciencia y Documentación López Piñero, Universitat de Valencia, 2007). Padrón explicitly notes in *Spacious Word* that the perception of space undergirding many descriptions of geography in the early Spanish empire involved the “representation of territory as a network of routes connecting preferred destinations of travel” (58).

As with the experience of travel as a kind of tour that could be narrated, reference to a set of geographic tropes to characterize new landscapes brought together epistemology and experience.⁴⁶ Using such categories required both forming analogies to other landscapes and identifying the ways in which the particular instance of the type was unique. The first step in defining this singularity was often a comparison or contrast with European landscapes.⁴⁷ For example, Europeans' understanding of what constituted a riverine region was modeled on the geography of river basins located in Atlantic Europe.⁴⁸ Newly encountered rivers invited references to familiar waterways, either as analogies or to point out exceptional features.⁴⁹ In part, this exercise implied a reference to Europe as the place of accumulated knowledge about, and the home of, ideal-typical geographies. But the assignment of singularity to places and regions necessarily also involved a more open-ended and multiform discourse about global variation. Singularity was defined not just in relation to ideal types associated with the metropole but also against a multiplicity of other widely distributed examples. A particular bay, for example, could be described as lacking or sharing the features of an ideal-typical bay modeled on European experience and understandings, but it also had to be distinguished from other bays around it – otherwise, the description had no practical value and did not enhance the authority of the author as eyewitness.⁵⁰

⁴⁶ In *Road to Botany Bay*, Carter distinguishes this “traveling mode of knowledge” from the categorizing epistemology championed by and exemplified in the work of the botanist Joseph Banks (9, 18). He also views Banks’s taxonomical approach to knowledge as aspatial (21). But I see colonial officials’ interest in developing imperial typologies as clearly connected to a spatial discourse. See especially Chapter 5 in this volume.

⁴⁷ Eric J. Leed points out that travel in the early modern world became identified as a philosophical and scientific project precisely because it implied and required making comparisons in order to acquire knowledge. The comparison came to be regarded “as a defense against the strange and unusual.” *The Mind of the Traveler: From Gilgamesh to Global Tourism* (New York: Basic Books, 1991), 68. Pimentel characterizes Baroque science as a combination of analogy-building and the search for “unusual phenomena.” Juan Pimentel, “Baroque Natures: Juan E. Nieremberg, American Wonders, and Preter-imperial Natural History,” in Bleichmar, *Science in the Spanish and Portuguese Empires: 1500–1800*, 93–111, 107.

⁴⁸ This point is made in Cunliffe, *Facing the Ocean*. It is discussed in depth in Chapter 2 of this volume.

⁴⁹ Columbus, for example, on his first voyage, came across a river “as big as the Guadalquivir coming through Cordova” and gave it the same name. O. C. Dunn and James E. Kelley, eds., *The Diario of Christopher Columbus’s First Voyage to America, 1492–1493* (Norman: University of Oklahoma Press, 1989), 229.

⁵⁰ Paula De Vos notes that “the search for the rare and the singular” conferred prestige well into the eighteenth century. “The Rare, the Singular, and the Extraordinary: Natural

The assignment of singularity occurred precisely at the moment when comparisons broke down. The process is easy to track in the many descriptions of landscape and geography in voyage chronicles that move from metaphor to exception. Consider just one example: Columbus's descriptions of harbors on his first voyage to the New World. Hopeful of finding estuaries and harbors where ships might lie safely and where large settlements might cluster, Columbus carefully described each bay. He often used European referents, as he did in comparing an estuary to the mouth of the Tagus River and a large harbor to the Bay of Cádiz.⁵¹ European standards also provided the measures of a good harbor, and Columbus noted when a particular bay might "hold all the ships of Spain" or have "room for a hundred ships."⁵² But comparisons faltered. In a move related to the discourse of the marvelous, Columbus found himself without referents to describe a harbor that he found to be superior to all the others he had encountered.⁵³ The unique harbor was so nearly perfect that it seemed an "enchanted" place that "one might not wish to leave." Columbus worried that "a thousand tongues would not suffice" to describe the place. Abandoning references to European geographies, he finally resorted to the quotidian metaphor of "a soup bowl" to describe it.⁵⁴

Identifying singularities in nature was in some ways very similar to drawing attention to marvels and prodigies, those oddities that defined norms and appeared to multiply at the margins of the civilized world. Yet, as Lorraine Daston and Katherine Park have pointed out, a geographic feature had the qualities of "a regular anomaly." It "expressed rather than violated the created order of nature." Whereas "*individual* anomalous occurrences" might elicit alarm and even horror, patterns of geographic anomaly signaled the diversity of nature and prompted expressions of wonder.⁵⁵ In the sixteenth and seventeenth centuries, the new prominence in both European natural philosophy and European

History and the Collection of Curiosities in the Spanish Empire," in Bleichmar, *Science in the Spanish and Portuguese Empires: 1500–1800*, 271–289, 287.

⁵¹ Dunn and Kelley, *The Diario*, 201 and 177.

⁵² Dunn and Kelley, *The Diario*, 163, 173.

⁵³ On the discourse of the marvelous, see Lorraine Daston and Katharine Park, *Wonders and the Order of Nature, 1150–1750* (New York: Zone Books, 2001); and Stephen Jay Greenblatt, *Marvelous Possessions: The Wonder of the New World* (Chicago: University of Chicago Press, 1991).

⁵⁴ Dunn and Kelley, *The Diario*, 181–3. See, again, Carter, in *Road to Botany Bay*, on the "indescribable" (44) nature of Australia when English observers abandoned metaphors.

⁵⁵ Daston and Park, *Wonders and the Order of Nature*, 50. Emphasis in original.

travel of a science of particulars, together with the necessary emphasis on descriptions of singularity, challenged such distinctions by proposing the possibility of arriving at general truths from the investigation of the sights and sounds attached to specific examples of phenomenological types.⁵⁶ This shift meant that, increasingly, empiricism was “grainy with facts,” with fragments of information or events that fit uncomfortably with theory.⁵⁷ It also meant that discerning irregularities depended on the testimony of witnesses, and on their reports of perceptions and experiences.⁵⁸

Such epistemological shifts help to explain the growing enthusiasm for modes of representing geography through narratives or tours and through descriptions of singular examples of universal types. Imperial geographies were fragmented in patterns produced through the naturally occurring repetition of features such as rivers, bays, and mountains, and then further variegated by sometimes unexplained local irregularities. Natural philosophers sought to devise rules that would explain both regular and irregular features while at the same time increasingly championing a view of nature as stubbornly productive of anomaly – as Bacon put it, “full of . . . winding and intricate folds and knots.”⁵⁹

This background to an emerging imperial geographic imagination was deeply influenced in theory and in practice by law as an epistemological framework. Law has been largely left aside in recent treatments of the collection and organization of geographic information in empire, and in the analysis of European travel narratives.⁶⁰ The oversight is significant.⁶¹

⁵⁶ Daston and Park, *Wonders and the Order of Nature*, chap. 4. On the emergence of a “knowledge . . . of particulars” in Spanish writings on the New World, see Antonio Barrera-Osorio, “Nature and Experience in the New World: Spain and England in the Making of the New Science,” in Eamon and Navarro Brotóns, *Más allá de la leyenda negra*, 132.

⁵⁷ Daston and Park, *Wonders and the Order of Nature*, 237.

⁵⁸ See Daston and Park, *Wonders and the Order of Nature*, 237; Barrera-Osorio, “Nature and Experience in the New World”; and Juan Pimentel, who discusses the unstable relation between travelers and verisimilitude in *Testigos del mundo: Ciencia, literatura y viajes en la ilustración*. Madrid: Marcial Pons, 2003, chap. 1.

⁵⁹ Daston and Park, *Wonders and the Order of Nature*, 240.

⁶⁰ An exception is Portuondo, who notes that Spanish cosmographers and *letrados* were closely associated and occasionally positioned as scientific rivals. “Cosmography at the *Casa*, *Consejo*, and *Corte*,” 69. See also *Secret Science*, chap. 3.

⁶¹ It is an especially egregious omission if we credit Donald R. Kelley’s argument that the “science of law” rather than natural philosophy shaped “the principal questions, terminology, and lines of investigation of the study of humanity” in Western history, or even the more modest claim that “ideas of law were often homologous with, if not

As we shall see, law and legal practices provided methods for the collection and organization of geographic knowledge. Law also operated as a medium for conflicts over the size and shape of imperial territories. Further, because conflicts were spatially distributed and legal stories or cases possessed a spatial dimension, associations formed with surprising ease between patterns of law and landscape. As the associations forged new categories of social space and drew attention to variations within those categories, observers struggled to define their fit within broader frameworks of spatial and legal ordering. Drawing further attention to forces of fragmentation and variation, the legal history of empire ultimately adds to the critique of narratives pairing the rationalization of space with expanding imperial control.

By way of illustrating the multifaceted relation of law and geography and before examining these qualities of legal cultures in empire more closely, we can return once more to the Treaty of Tordesillas, that exercise in line drawing often considered the quintessential example of the tightening connection between European imperial ambitions and the rationalization of global space. I have already mentioned some ways in which the difficulties in finding the lines converted the treaty into something less than a simple division of the world. A closer look at the legal meanings of the agreement reveals further layers of complexity. The treaty followed a series of papal bulls on the division of territories between the Iberian crowns but represented a peace pact rather than a ruling over Iberian powers.⁶² Further, the accord opened the way to continued jockeying over

indistinguishable from, ideas of natural order or disorder.” *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1990), 3.

⁶² It specifically asked that in future the pope “order his bulls in regard to it” and incorporate within them “the tenor of this agreement.” (“Treaty between Spain and Portugal concluded at Tordesillas, June 7, 1494,” Document 9 in Frances Davenport and C. O. Paullin, *European Treaties bearing on the History of the United States and its Dependencies* [Washington, D.C.: Carnegie Institution of Washington, 1917], 99.) The treaty thus marked the beginning of the end of universal papal authority rather than a high point in the workings of Christendom as a transnational legal order presided over by the pope. It affirmed the importance of Catholicism as a rationale for empire and undermined papal authority by authorizing sovereigns to act on their own to oppose a threat by infidels. Portugal used this argument to justify unilateral military action in parts of North Africa nominally under Spanish control. The Spaniards for their part never sought papal approval for their conquest of the Canary Islands but relied instead on the justification of conquest over infidels. This was a “politics of facts on the ground” or of “faits accomplis” (“la política de hechos consumados”) and a strategically motivated challenge to papal authority. See Santiago Olmedo Bernal, *El dominio del Atlántico en la baja Edad*

claims by awarding something short of full title to both Iberian powers in their respective spheres of influence.⁶³ In recognizing that ownership attached only to lands in each sphere that had been or would be discovered by a crown's agents, the treaty bestowed "the right to navigate the said sea within certain specified limits and seek out and take possession of newly discovered lands."⁶⁴ Sovereignty was not a given, in other words, but would depend on recurring proofs, including mapping, description, the founding of political communities, ceremonies recognizing new vassals, and administrative acts designed to support claims to discovery and possession. The same treaty that appears to represent the extra-European world as an object of European imperial rule instead shows the ways it stimulated a fluid geographic discourse and open-ended legal politics.

Legal Posturing and Imperial Knowledge

Often portrayed as actions preliminary to conquest and settlement, even the earliest European overseas voyages were colonial projects guided by administrative routines and by law. We tend to think of legal cultures as differing considerably across European polities, but early expeditions displayed variations of familiar legal forms, and Europeans drew elements from a widely shared legal repertoire.⁶⁵ Like colonial polities, every collection of travelers or settlers operated on the assumption of a legal relationship binding subject and sovereign, and every such group recognized a formal division of authority between lower and higher levels of legal hierarchy.

Media: Los títulos jurídicos de la expansión peninsular hasta el Tratado de Tordesillas (Valladolid, Spain: Sociedad Vº Centenario del Tratado de Tordesillas, 1995), 420–2; quote on 428. For an account of the legal rationales for Iberian expansion that explains clearly the organizing tension between canon law and the thrust of secular authority, see James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250–1550* (Philadelphia: University of Pennsylvania Press, 1979).

⁶³ On John Dee's lawyerly interpretation of the grant as marking a sphere of influence rather than a gift of title, see MacMillan, *Sovereignty and Possession in the English New World*, 67–74. See also Steinberg, *The Social Construction of the Ocean*, 76–77.

⁶⁴ Davenport, *European Treaties*, 99.

⁶⁵ I am not denying profound differences across empires and even within them but am choosing just to emphasize the continuities arising from referencing the same or similar legal concepts and sources, often indirectly. For an interesting study of the varieties in legal culture that could have been generated by the concentration of settlers from different microregions, see Christopher Tomlins, "The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the 17th Century," *Law and Social Inquiry* 26, no. 2 (2001): 315–72.

These broad rubrics left most of the details of imperial legal administration undefined. Many people operating as legal officials in empire had no formal training in law, and even those with training found few clear precedents and wide discretion in interpreting, applying, and inventing procedures and rules.⁶⁶ Distance nurtured innovation. Metropolitan attempts to impose orderly administration often faltered when local officials saw enforcement as a threat to their interests. The quip that captures this dynamic for the Spanish Empire – “obedezco pero no cumpro” (“I obey but do not comply”) – had its counterpart in other empires and in tactics such as failing to send requested records back to European courts or blaming divergent local practices on delays in receiving imperial directives.⁶⁷ Yet we should not represent distance and noncompliance as forming the only barriers to the creation of coherent imperial legal orders. Metropolitan efforts to construct internally consistent legal orders were desultory at best. Periods of energetic and often ineffective imperial legal planning interrupted longer spans of time when metropolitan officials mainly reacted to shifting circumstances and recognized the advantages of ad hoc solutions in loosely conforming systems of law.

The most important sources of variation derived from local legal politics. Europeans far from home reenacted legal rituals as they remembered them and imperfectly reconstructed legal practices and arguments. In early centuries this devotion to what I will call “legal posturing” can be explained partly by a system of rewards that required subjects to sustain their ties to sovereigns and seek future patronage on the basis of evidence that they had advanced crown interests. Litigiousness in Europe also urged travelers to devise and then stick to legal scripts in positioning themselves to fend off litigation or indictments.⁶⁸ The influence of law on the actions of sojourners and settlers was grounded in their knowledge

⁶⁶ On the pervasive influence of medieval canon law on the “legally trained” men who “played the central role in shaping the terms of political discourse in the early modern world as it concerned international relations,” see James Muldoon, “Discovery, Grant, Charter, Conquest, or Purchase,” in *The Many Legalities of Early America*, ed. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001), 25–46, 26; and Muldoon, *Popes, Lawyers, and Infidels*.

⁶⁷ For example, Mary Sarah Bilder traces the subtle noncompliance of Rhode Island officials to requests from London to send lists of local legislation. Imperial officials could not disapprove of local laws that they did not know about. *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).

⁶⁸ On litigiousness, see Richard L. Kagan, *Lawsuits and Litigants in Castile, 1500–1700* (Chapel Hill: University of North Carolina Press, 1981).

about past legal practice as well as suppositions about possible future legal entanglements.⁶⁹ Other forms of legal posturing included the inventive referencing of various sources of law in support of often ad hoc local policies.⁷⁰ Imperial agents regularly invoked elements of Roman and canon law; cited juridical passages from the Bible; and reasoned by analogy, referring to procedures and practices from home while working with very incomplete knowledge or devising intentionally selective applications of metropolitan law.⁷¹ Legal cultures, including an active legal imagination connecting lessons from law to everyday practices, were already diffuse and varied in Europe.⁷² Imperial sojourners were not simply failing to apply law correctly; they were continuing inventive applications of law as a familiar kind of strategic cultural practice.

The importance of legal posturing is reflected in the pervasive (but often overlooked) reporting about law in early overseas ventures. Scholars have tended to regard voyage chronicles as falling within the genre of travel literature, but many accounts of early voyaging are better understood as examples of legal writing, produced by chroniclers who were also royal officials or by participants in overseas commercial ventures positioning themselves or others in relation to ongoing or anticipated cases. From an early stage in Atlantic voyaging, for example, royal interests compelled documentation of mariners' and merchants' activities by legal personnel. The Portuguese king placed *escribães* (legal officials who served both as scribes and notaries; in Spanish, *escribanos*) on crews of early expeditions to Atlantic islands and West Africa and charged them

⁶⁹ For an example of the adaptation of a legal routine in constituting political communities in Spanish America, see Tamar Herzog's study of *vecindad*, or membership in municipalities. Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven, CT: Yale University Press, 2003).

⁷⁰ For an example of a study seeking to understand an aspect of legal history through the analysis of types of narratives, see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987).

⁷¹ One kind of legal positioning has been studied by John Philip Reid, who found that the reputation for lawlessness on the overland trail to California in the mid-nineteenth century did not match a surprising orderliness in the legal treatment of property and persons on the trail. In the absence of formal legal institutions and enforcers, people tended to act out legal practices as remembered. *Law for the Elephant: Property and Social Behavior on the Overland Trail* (San Marino, CA: Huntington Library, 1997).

⁷² A rich and persuasive study of legal imagination is that of Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge: Cambridge University Press, 2004). See also John Barrell, *Imagining the King's Death: Figurative Treason, Fantasies of Regicide, 1793–1796* (Oxford: Oxford University Press, 2000).

with producing written records of the voyages.⁷³ Private investment and interest in crown patronage also motivated the production of chronicles that were based on, or overlapped with, legal documents. An early example is the fifteenth-century narrative of a voyage along the African coast, Eustache de la Fosse's *Voiaige à la Guinée*, which probably drew from a deposition recorded to inform financial backers of the reasons for the loss of the ship and its cargo.⁷⁴ Acutely aware of the need to provide proofs to the crown of their meritorious actions if they were to obtain future patronage in the empire, Spaniards recorded and collected sworn statements, or *probanzas*, about expeditions. These testimonials were more practical and prosaic than the flowery descriptions that have been used to characterize Spaniards' visions of New World landscapes and encounters as "marvelous."⁷⁵ Some letters to the crown, such as the one to the Spanish king that Orellana penned after he had abandoned Gonzalo Pizarro and his company on a doomed expedition in the Amazon region, sought to stave off charges of disloyalty or to improve the chances for future imperial postings. Letters from ship captains or merchants to sponsors or business partners at home similarly sought to present information in ways intended to bolster particular legal arguments; for example, a captain reporting a storm might be recording a routine event in the log while also adding to a narrative about his valor in the face of adversity to deflect a suit or to prepare the way for an insurance claim for his sponsor.⁷⁶

Such pervasive engagement in legal writing reflected a deeper influence of the law. On a fundamental level, law represented an important epistemological framework for the organization and evaluation of evidence of

⁷³ The Spanish adopted this practice in 1476 for voyages to Guinea. The *escribanos* were regarded as an extra layer of protection of the crown's interests and were also charged with keeping an inventory of all cargo, as well as records of purchases and sales. P. E. Russell, "Castilian Documentary Sources for the History of the Portuguese Expansion in Guinea, in the Last Years of the Reign of Dom Afonso V," in *Portugal, Spain, and the African Atlantic, 1343-1490: Chivalry and Crusade from John of Gaunt to Henry the Navigator and Beyond* (Brookfield, VT: Variorum, 1995), XII, 1-23.

⁷⁴ P. E. Russell, "New Light on the Text of Eustache de la Fosse's *Voiaige à la Guinée* (1479-1480)," in Russell, *Portugal, Spain, and the African Atlantic*, XIII, 1-13, see especially 13.

⁷⁵ James Lockhart and Enrique Otte comment on the "often down-to-earth first reports on new areas" and the contrast of their tone with that of later writings. *Letters and People of the Spanish Indies: Sixteenth Century* (Cambridge: Cambridge University Press, 1976), 1. See also Greenblatt, *Marvelous Possessions*.

⁷⁶ On the influence of insurance law on reporting by slave ship captains to their sponsors, see James Oldham, "Insurance Litigation Involving the *Zong* and Other British Slave Ships, 1780-1807," *Journal of Legal History* 28 (2007): 299-318.

all kinds, and of geographic information in particular.⁷⁷ Even the most informally organized and unofficially sponsored ventures boasted some sort of legal structure, which was a precondition of internal order, the securing of profits, and the recognition of claims. Not surprisingly, this structure encouraged reliance on legal procedures for establishing truth claims, especially because law had moved in early modern Europe more quickly than science had toward an understanding of discrete events as facts supported by evidence.⁷⁸ As imperial agents gathered information from native guides and other locals, depositions and other routines for questioning witnesses served as models for the interrogation of many voyagers on their return.⁷⁹ Such gathered testimony seconded the most highly valued form of evidence, which in the Roman-canon legal tradition was eyewitness testimony.⁸⁰ So, for example, the legal training of Juan López de Velasco, who oversaw the collection of data for the *Relaciones de Indias*, together with his experience collecting notarized depositions to investigate New World governance, led him to favor signed, eyewitness statements as the basis of information about New World geographies.⁸¹ The privileged status of first-person accounts added to

⁷⁷ Daniel Lord Smail makes the interesting argument that multiple cartographic sensibilities in late medieval Marseille gradually gave way, through the influence of property disputes, to an emphasis on a notarial template for describing space. Other similar processes may have been at work to enhance the currency of legal discourses about geography, including other practices that, like the methods for marking the perimeter of properties, merged the individual experience of space with cartographic representations and legal forms. *Imaginary Cartographies: Possession and Identity in Late Medieval Marseille* (Ithaca, NY: Cornell University Press, 1999).

⁷⁸ See Barbara J. Shapiro, *A Culture of Fact: England, 1550–1720* (Ithaca, NY: Cornell University Press, 2003).

⁷⁹ Some travelers' accounts were recorded as sworn depositions. On Hakluyt's compilation of data on Drake's circumnavigation, see E. G. R. Taylor, *Late Tudor and Early Stuart Geography, 1583–1650: A Sequel to Tudor Geography, 1485–1583* (London: Methuen, 1934), 19.

⁸⁰ The importance of eyewitnesses in establishing truth claims is discussed in Anthony Pagden, *European Encounters with the New World from Renaissance to Romanticism* (New Haven, CT: Yale University Press, 1993), chap. 2. See also Barbara J. Shapiro, "Beyond Reasonable Doubt" and "Probable Cause": *Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: University of California Press, 1993).

⁸¹ The method had been adopted early in gathering information from pilots about navigation routes. Returning pilots were presented with questionnaires that were not unlike those administered to witnesses providing sworn statements (*probanzas*) in legal cases. Cosmographers then interpreted and consolidated this information. See Alison Sandman, "Controlling Knowledge: Navigation, Cartography, and Secrecy in the Early Modern Spanish Atlantic," in *Science and Empire in the Atlantic World*, ed. James Delbourgo and Nicholas Dew (New York: Routledge, 2008), 31–52, 42; and Antonio Barrera-Osorio, "Empiricism in the Spanish Atlantic World," in *Science and Empire in the*

incentives to produce and disseminate chronicles in the form of itineraries. In England, where many of the men involved in championing North Atlantic voyages had legal training, the elder Richard Hakluyt's career as a lawyer might have accounted for the decision of the younger Richard Hakluyt to assemble first-person voyage accounts as if they constituted an array of evidence instead of composing a comprehensive narrative of English overseas travel.⁸²

If it is difficult to trace with precision the influence of legal practices on approaches to the collection of knowledge about the extra-European world, it is partly because the law and geography shared a "malleable epistemological foundation."⁸³ That is, approaches to the production of knowledge were not pre-formed but developed in part in response to practices and conflicts in empires. As with the elaboration of geographic knowledge, understandings of law depended upon analogizing and categorization. Such approaches cut across late medieval and early modern European polities, in part because a broad Humanist project sought to identify general principles in Roman law that could accommodate new legal phenomena, conditions, and cases.⁸⁴ Also as with geographic knowledge, imperial ventures provided new stimuli to analogy-driven approaches to legal analysis. Disputes in empires were defined simultaneously as similar to other conflicts and as in some respects singular. The very qualities that made law transplantable to distant places guaranteed that legal conflicts in those places would generate phenomena resistant to analogies or categorization.

It might be said that the whole of the imperial world represented a zone of legal anomaly vis-à-vis the metropole. Certainly we can find important strands of legal discourse and administrative change focused on defining

Atlantic World, ed. James Delbourgo and Nicholas Dew (New York: Routledge, 2008), 177–202.

⁸² Taylor, *Late Tudor and Early Stuart Geography*, 14. See also Peter C. Mancall, *Hakluyt's Promise: An Elizabethan's Obsession for an English America* (New Haven, CT: Yale University Press, 2007). On the legal training of men involved in early empire, see MacMillan, *Sovereignty and Possession in the English New World*, especially his comments on the influence of legal training on John Dee (67–74).

⁸³ This is Portuondo's phrase characterizing sixteenth-century Spanish cosmography; it is useful as a broader description of approaches to knowledge. *Secret Science*, 11.

⁸⁴ I stop short of the claim that analogizing and categorization were universal qualities of legal epistemology. On this point, see Bernard S. Jackson, "Analogy in Legal Science: Some Comparative Observations," in *Legal Knowledge and Analogy: Fragments of Legal Epistemology, Hermeneutics, and Linguistics*, ed. Patrick Nerhot (Dordrecht, The Netherlands: Kluwer, 1991), 145–64. And see also Geoffrey Samuel, *Epistemology and Method in Law* (Burlington, VT: Ashgate, 2003), chap. 1.

the extra-European world as legally different from realms closer to the seats of sovereign power. British colonial legal histories often begin with an analysis of Calvin's Case in 1608, which occasioned Sir Edward Coke's ruling that the protections of the common law did not extend beyond England to the crown's other realms, though the king's legal authority and English subjecthood were both projected beyond England's borders.⁸⁵ In the Spanish Empire, efforts by the crown to limit ecclesiastical authority and to create new institutions for Indian subjects can be viewed as marking foundational moments for divergence between metropolitan and colonial law. Yet, as with representations of extra-European geographies as variants of familiar European types, this exercise of defining colonies as legally different in relation to the metropole paralleled a more diffuse and fluid project of characterizing multiple and repeating zones of legal variation.⁸⁶ The discourse and politics about subjecthood (and, later, citizenship) and divided sovereignty provided part of the framework for describing legally uneven imperial territories. Reporting on conditions in empire meanwhile teased out subtle distinctions between ownership and jurisdiction, natural and positive law, and direct and indirect rule while recommending their recombination in new forms. As with singular geographies, legal anomalies urged new ways of arranging knowledge precisely because they appeared to defy categorization. Some colonial officials themselves used the word "anomalous" to describe places for which they could not easily define structures of law or the nature of sovereignty. Scholars in Europe, including Alberico Gentili, Hugo Grotius, Jeremy Bentham, and Henry Sumner Maine, took up this challenge in responding

⁸⁵ Recent analyses of Calvin's Case caution that it should not be read as a blueprint for subsequent imperial legal policy. Christopher Tomlins notes that although Coke offered a distinction between the legal status of colonies of conquest and inherited realms, this difference did not solidify into a contrast between conquered and settled territories until later, and it was a formula that even then left most questions about legal administration open to interpretation. "Law, Population, Labor," in *The Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008), 1:211–52. Daniel Hulsebosch has argued that Coke also laid the basis for viewing the protections of common law as culturally diffuse and transportable. *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2005), 22–28.

⁸⁶ William Nelson argues that historians have lavished too much attention on studying the continuities and discontinuities of law in British North American colonies with law in England. He suggests that the project is flawed in part because many metropolitan legal processes remain opaque. He proposes refocusing North American colonial legal history on comparisons across colonies. *The Common Law in Colonial America* (New York: Oxford University Press, 2008).

to individual cases that revealed peculiar interimperial entanglements and intrainperial puzzles. At the same time, anomalous legal zones were so common that they came to be regarded as integral and expected elements of empire.

The value to historians of thinking about anomalies is the implied diversity of spaces of law in empire. The perspective captures a good deal more complexity than is implied by documenting the contemporary discourse about a contrast between zones of lawlessness and of law or about distinctions between metropolitan and colonial law, and it saves us from the assumption of a smooth and steady progression toward territorial sovereignty. At the same time that legal anomalies of empire posed deep puzzles for local officials and international lawyers, they formed parts of networks of imperial control and sources of interimperial regulation. Even when they operated within substantively very different legal systems, Europeans shared the understanding that legal posturing and politics in empire mattered to the theory and practice of global legal order.

Law, Geography, and the Search for Sovereignty

As we explore the connections between legal and geographic imagination, it is rather difficult to know when chroniclers and other observers were describing accurately variations in legal geography, when they were using geographic categories suggestively but without fixed meanings attached, and when they were intending only to record physical details without implying political or legal significance. (Sometimes, surely, a mountain is just a mountain.) Though we cannot always make such distinctions, legal references and geographic descriptions intersected often enough to give us some confidence that they belonged to the same world of discourse. More specifically, both law and geography produced ways of structuring understandings of empires as configurations of corridors and enclaves, objects of a disaggregated and uneven sovereignty.

We see the links between law and geography clearly in political conflicts centering on subjecthood, the definition of membership in political communities, and the scope and nature of delegated legal authority. The problem of subjecthood corresponded in interesting ways to the imagined political significance of subjects moving through space. The presence of European subjects itself implied the extension of law. Sojourners had many good reasons to assert their continued and direct ties to sovereigns. Informal and formal imperial agents positioned themselves for rewards, sought protection of their interests and property, and claimed sponsorship to secure or improve their social standing. All European empires gained

advantage at some point from unofficial agents, whose activities cost governments little or nothing but promised to extend their influence and eventually produce revenue that would reach their coffers. As they moved, subjects performed legal rituals and acted as (sometimes self-appointed) representatives of European powers, tracing pathways that became conduits for law and even corridors of jurisdiction.⁸⁷

A variety of individuals and corporate groups could carry delegated legal authority into empire in ways that helped to shape the contours of imperial territories: ship captains, leaders of reconnaissance voyages, trading companies, municipalities, colonial governors or viceroys, and garrison commanders possessed an array of often-powerful legal prerogatives. Imperial representatives presided over local legal proceedings, often on the basis of a familiar jurisdictional arrangement whereby only capital offenses needed to be referred to metropolitan courts for judgment. Relations between delegated legal authority and imperial sovereignty became the basis, in turn, for the articulation of indigenous legal and political systems with metropolitan and colonial law. The resulting “layered sovereignties” emerged as one of the defining characteristics of empire.⁸⁸ The analogy of layers is useful but also incomplete. Centers of

⁸⁷ Although not explicitly referring to law as part of this effect, Carter insightfully writes in *Road to Botany Bay* that imperial spaces were produced through “a criss-cross of routes gradually thickening and congealing into fixed seas and lands” (23).

⁸⁸ The phrase is used by Frederick Cooper in describing a late imperial variation in “Alternatives to Empire: France and Africa after World War II,” Douglas Howland and Louise White, eds. *The State of Sovereignty: Territories, Laws, Populations* (Bloomington, IN: Indiana University Press), 94–123, 106. Sugata Bose notes the prevalence in the Indian Ocean world of a “shared and layered concept of sovereignty.” *A Hundred Horizons: The Indian Ocean in the Age of Global Empire* (Cambridge, MA: Harvard University Press, 2006), 25. On layered sovereignty as a property of empires in general, see Jane Burbank and Frederick Cooper, *Empires in World History* (Princeton, NJ: Princeton University Press, forthcoming). And on layered sovereignties as shaping the relations of early modern polities, see Philip Stern, “‘A Politie of Civill & Military Power’: Political Thought and the Late Seventeenth-Century Foundations of the East Indian Company-State,” *Journal of British Studies* 47 (2008): 253–83. In finding the origins of layered sovereignty in delegated legal authority, we should note one element of discontinuity. Though Rome was a model that participants at all levels of European imperial projects routinely referenced, magistrates under Roman law were not, strictly speaking, delegated legal authorities but instead actually possessed imperium. See J. S. Richardson, “Imperium Romanum: Empire and the Language of Power,” *Journal of Roman Studies* 81 (1991), 1–9; and Susan Reynolds, “Empires: A Program of Comparative History,” *Historical Research* 79, no. 204 (2006), 151–65. European overseas empires often blurred the distinction between sovereign and delegated authority, as they did, for example, in defining the legal authority of viceroys, who were supposed to serve as stand-ins for the king (see Alejandro Cañeque, *The King’s Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico*, New York: Routledge, 2004). As we shall see, though, conflicts in overseas empire repeatedly raised questions about the prerogatives

delegated legal authority produced irregular and only roughly concentric zones of control around them. The layers of authority thickened and thinned as one traveled between enclaves and through the territories at their margins.⁸⁹ Geographic categories at times became a convenient shorthand for describing these variations.

Studying patterns of law and geographic discourse leads us to challenge the emphasis in many accounts of the legal geography of empire on sharp distinctions between European and extra-European spaces. Some legal theorists have tended to represent Europe as a zone of law contrasting with an extra-European world imagined as a zone of lawlessness.⁹⁰ Often lost in this framing is the difference between an historically occurring European discourse about extra-European lawlessness and historically occurring patterns of law and legal practice. There is no doubt that a discourse about lawlessness became more prominent in particular periods.⁹¹ It was related to ideas about wildness and barbarism, categories contrasted to civility as a property of Christendom or of particular European political communities.⁹² Yet the supposedly empty box of

of delegated legal authority and underscored for various European scholars the strains of defining sovereignty as indivisible and the continued necessity of recognizing divided sovereignty. On this point, see Keene, *Beyond the Anarchical Society*.

⁸⁹ Henri Lefebvre describes this effect as the interpenetration or superimposition of social spaces. They produce “a structure far more reminiscent of flaky *mille-feuille* pastry than of the homogeneous and isotropic space of classical (Euclidean/Cartesian) mathematics.” *The Production of Space* (Malden, MA: Blackwell, 2004), 86. I have described early modern legal orders as “multicentric,” a term intended in part to avoid any implicit assumption that layered systems of law and sovereignty corresponded to neat hierarchies of authority. Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), 102.

⁹⁰ Carl Schmitt, whose approach to global law will be discussed in Chapter 6, has argued that the “bracketing” of violence outside Europe permitted the founding of an international legal community within Europe. *The Nomos of the Earth in the International Law of the Jus Publicum Europeum* (New York: Telos Press, 2003).

⁹¹ Eliga Gould traces the shifts within an Atlantic legal regime from the period when the “lines of amity” marked a division between a zone of negotiated peace and a zone of war to a brief period around the time of the Seven Years’ War, when European discourse highlighted the savagery of Indian warfare, to a period after the war when the distinction between European and outer-Atlantic legal practices became less sharp. “Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772,” *William and Mary Quarterly* 60, no. 3 (2003), 471–510. On the discourse of Indian savagery during the Seven Years’ War, see also Peter Silver, *Our Savage Neighbors: How Indian War Transformed Early America* (New York: W.W. Norton, 2007).

⁹² On evolving ideas about Christendom and their relation to the conceptualization of empire, see James Muldoon, *Empire and Order: The Concept of Empire, 800–1800* (New York: Macmillan, 1999). I discuss barbarism and wildness in more detail in Chapter 5.

lawlessness, a legal void, was in fact full of law. Imperial agents actively promoted the thrust of jurisdiction “beyond the line,” and no goal of empire could be achieved without the legitimization of subordinate legal authorities in distant locations. Complex plural legal orders included and even depended on indigenous sources and forums of law.⁹³ As we find in declarations of martial law in colonial settings and in other moments of apparent legal rupture, even the suspension of law did not create legal voids, or spaces of lawlessness, but instead generated arenas for novel procedural and doctrinal experiments that continued to reference imperial law.⁹⁴

In its unorthodox telling of the history of variegated legal spaces in empire, this book examines the intersection between geographic and legal imagination in four chronologically arranged periods. Each chapter combines attention to a geographic trope, discussion of an aspect of jurisprudence, and analysis of a case study or set of case studies of conflicts in empire. Europeans’ efforts to structure and understand forms of partial or attenuated sovereignty drew from and led them to highlight discourses about particular geographic tropes. Rivers, ocean passages, islands, and hills – these elements sometimes symbolized remoteness and wildness, categories with their own legal and political valence. Geographic elements also developed more specific legal associations in particular periods. Shifting conditions of interimperial rivalry encouraged the selective emphasis on geographic tropes and peculiar interpretations of their legal significance.

Chapter 2 investigates legal practices in play in European reconnaissance along Atlantic rivers in the long sixteenth century. In riverine reconnaissance, Europeans emphasized the authority of expedition leaders as sovereign representatives extending law into yet unclaimed territory. For participants, the stakes of positioning for resources and patronage were high. The combination of these conditions produced charges of mutiny and treason, set against the imagined dangers of rogue polities led by imperial agents usurping royal authority. Geographic imagination and political danger overlapped as the conflicts drew attention to distant and difficult-to-reach places – the upper Paraguay River, the middle reaches

⁹³ See Benton, *Law and Colonial Cultures*.

⁹⁴ On martial law in empire, see Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003); and R. W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (Oxford: Oxford University Press, 2005). More detailed discussion of these themes appears in Chapters 4 and 6.

of the Amazon –where the temptations of self-rule might not be resisted. Possession of river regions meanwhile developed into a complex affair linking signs of settlement and legal acts designed to affirm the composition of political communities. Representations of upriver country as potentially politically rebellious arenas continued through the seventeenth and early eighteenth centuries, but the relation between coastal and backwater communities shifted as some colonial polities began to assert authority beyond river corridors. This legal politics began to shape imperial zones defined by territorial jurisdictions and loosely bounded by geographic features.

Images of rivers as corridors of elusive but essential imperial control paralleled emerging understandings of ocean law. Chapter 3 examines the legal geography of oceans, with special emphasis on the origins of the Atlantic and Indian oceans as separate regulatory spheres at the turn of the eighteenth century. Pirates, often viewed romantically as purveyors of lawlessness or of alternative legal orders, participated actively in the construction of imperial ocean space by insisting on their ties to distant sovereigns. Even in the midst of open raiding, mariners engaged in legal posturing, scripting cover stories that they might present in prize proceedings or criminal courts. In doing so, they affirmed the view also held by Gentili, Grotius, and other founding figures of international law that the sea could not be owned but could be subject to control and to the jurisdiction of imperial powers. Even as freedom of the seas developed as a legal doctrine, Europeans recognized that ocean space was crisscrossed by corridors of imperial control. The high seas were not a lawless zone but a legal space constructed by interimperial tensions. The emerging regulatory order of the Atlantic world depended as much on the parallel elaboration of imperial prize courts as on shared understandings of the law of nations. A thickening network of imagined corridors produced distinctive regional regulatory spheres.

The second part of the book turns to analysis of some examples of imperial enclaves of particular kinds. Military law was especially important in early modern colonizing, providing the structures for establishing authority over discrete and often fortified enclaves. This form of “garrison government” varied in its operation but was similar in structure across European empires.⁹⁵ Chapter 4 traces the renewed emphasis

⁹⁵ The phrase is from Stephen Saunders Webb, *The Governors-General: The English Army and the Definition of the Empire, 1569–1681* (Chapel Hill: University of North Carolina Press, 1987 [1979]). J. H. Elliott discusses the limitations of the model in the English

on military governance within the period of intensified, fully global inter-imperial rivalry from the late eighteenth century to the first decades of the nineteenth century. Islands figured prominently in imperial planning and in European political imagination as places essential to the protection of expanding global empires and as sites whose natural boundaries supposedly made the scope of jurisdiction transparent and claims of sovereignty straightforward. But even the most seemingly uncontested colonial island ventures came to be characterized by unresolved tensions between local authority and imperial oversight. The history of colonial island penal colonies shows this ambiguity and helps to explain the timing of an energetic application of martial law in empire. Early European criminal law eschewed imprisonment, so that experiments with isolating penal labor were conducted mainly under military authority, as in Spanish presidios or on French galleys. Banishment was nevertheless a part of the legal repertoire, and as transportation of convicts to the colonial world developed into a routine practice, colonial polities also began to isolate convicts in penal settlements. Such phenomena built on popular images of marooning mutineers on remote islands and raised new legal questions about whether penal settlements were garrisons, places of transition, or the legal equivalents of slave plantations. I explore these parallels in examining late eighteenth-century Spanish experiments with colonial transportation, a trend that directly linked garrison administration with penal practice in a range of island settings, from Puerto Rico to the Juan Fernández Islands off the coast of Chile, to the Philippines. I also analyze debates over the administration of a forced labor system on the penal colony of Norfolk Island, in the South Pacific. Drawing on this case, the chapter explores the links between debates about island penal colonies and the constitutional meanings of declarations of martial law. Understanding this connection allows us to reframe discourses about slavery, servitude, abolition, and militarism as variants of a broader debate about the scope of legal control over colonial enclaves rather than as, principally, elements of a discourse about rights.

The mirror images of European-administered enclaves were the reserves of territory sited within European empires yet remaining under non-European control. The difficulties of defining the nature of sovereignty in these colonial enclaves became increasingly acute as Europeans began to

and Spanish empires in *Empires of the Atlantic World: Britain and Spain in America, 1492–1830* (New Haven, CT: Yale University Press, 2006). See also the discussion of militarism and empire in the late eighteenth century in Chapter 4.

highlight territorial sovereignty as a key attribute of statehood. Chapter 5 turns to the legal politics of colonial enclaves and their place within international law. Geographic representations are again central to the story. Colonial officials' ideas about the nature of sovereignty in hill regions of India framed a set of complex and intractable legal conflicts involving Indian princely states. Colonial officials ultimately recognized that the project of systematizing legal politics was impossible while also insisting that the suspension or partial application of law in certain territories formed a routine product of imperial law and indirectly flowed from international law. In the same decades that international lawyers were emphasizing territorial sovereignty as a property of sovereign states in the international order, they were forced to recognize that imperial sovereignties preserved and created highly variegated legal geographies.

Recognition of a shared repertoire of law helps to make sense of the processes through which legal conflicts on the margins of European spheres of influence, and in places that were widely defined as remote or anomalous, generated broad patterns and often similar assessments and actions. Without understanding European assumptions that crown subjects could carry jurisdiction into distant places, for example, we would not be able to revise fully the image of a world divided into European and non-European legal spheres. I will pay particular attention in this study to legal practices and concepts available to Europeans across different empire-states. Particularly in early centuries, this shared legal repertoire consisted mainly, though not exclusively, of Roman and canon law, combined with the familiarity across Europe with jurisdictional complexity in multiple forms. The book's detailed case studies draw mainly from the Spanish and English empires and include some French, Portuguese, and Dutch examples and materials. A different set of scholarly objectives might lead one to emphasize the differences rather than similarities across these legal orders; the goals of this book call for attention mainly to continuities and parallels.⁹⁶

⁹⁶ The category "European" as it is used here thus refers to the European polities of the Atlantic world and the term "empire" to overseas activities and colonies. I do not discuss land-based imperial polities of Europe and Asia, but recent work by legal historians suggests both some continuities and contrasts. Jane Burbank, for example, has argued that the Russian empire propagated a distinctive structure, definition, and culture of rights. She has also suggested that the full participation of peasants in Russian imperial law is similar to the engagement of commoners in other imperial legal systems. *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905–1917* (Bloomington: Indiana University Press, 2004); and "Thinking Like an Empire: Estate, Law, and Rights in the Early Twentieth Century" in *Russian Empire: Space, People, Power, 1700–1930*,

One benefit of the analysis of the formation of corridors and enclaves within imperial spheres of influence is that it moves us beyond a reliance on the concept of borderlands to describe spaces in which imperial sovereignty was contested.⁹⁷ The term itself implies the clash of imperial powers over territorial control, and describes the spatial pattern that emerged when imperial zones bumped up against one another. But indeterminacy of sovereignty sometimes resulted from conditions other than competing claims, and from politics not centered on territorial mastery. Precisely because effective imperial control was defined by sets of narrow corridors and clusters of enclaves, multiple imperial powers could operate in the same region without producing abutting or conflicting spheres of control. The reach of jurisdiction could follow a snaking pattern of travel and trade routes that might cross or parallel other passages without entanglement. In fact, officials, merchants, and settlers sometimes angled to avoid borderland conflicts, and, as we will see, this goal influenced arguments about the nature of legal claims in vast areas. Interimperial politics often centered not on territory but on the policing of travel routes, rights to trade, definitions of subjecthood, or the fruits of imperial patronage. In some enclaves, control shifted from one imperial power to another many times over several decades with a regularity that itself rendered sovereign ties tenuous.⁹⁸ And everywhere, imperial agents failed to dictate colonial conditions on their own; locals maneuvered politically in ways that altered territorial claims and legal institutions. The resulting

ed. Jane Burbank, Mark Von Hagen, and A. V. Remnev (Bloomington: Indiana University Press, 2007), 196–217. In emphasizing Spanish and English empires, I intend to contribute both to the project of studying the empires' entanglements and to the scholarship on comparisons between them. For a recommendation to study "entanglements," see Eliga Gould, "Entangled Atlantic Histories: A Response from the Anglo-American Periphery," *American Historical Review* 112 (2007), 764–86. A broad comparative study of the Spanish and English empires is provided in J. H. Elliott, *Empires of the Atlantic World*.

⁹⁷ For overviews of borderlands that emphasize their relation to the formation of borders, see Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History," *American Historical Review* 104, no. 3 (1999), 814–40; Michiel Baud and Willem van Schendel, "Toward a Comparative History of Borderlands," *Journal of World History* 8, no. 2 (1997), 211–42.

⁹⁸ This pattern occurred with special regularity in the period of intensified interimperial rivalry in the decades at the end of the eighteenth century and into the first decades of the nineteenth century. Consider just two notable examples: Colonia del Sacramento in the Río de la Plata estuary, which changed hands multiple times between the Spanish and Portuguese empires, and the Cape Colony's transfer between Dutch and English rule.

variegated legal zones were not lawless but legally complex – places where political authority was widely understood as a work in progress.⁹⁹

The book returns at the end to some of the theoretical problems raised in this chapter. In recent decades, theorists such as Henri Lefebvre, Anthony Giddens, David Harvey, and Edward Soja have extolled the importance of bringing space back in to social theory, while other scholars have defined a cross-disciplinary field labeled “spatial history.”¹⁰⁰ It is easy enough to appreciate the importance of space, both in theoretical terms and in the context of particular histories. It has proved to be more difficult to move beyond the exhortations to attend to space and the examples of its importance to arrive at concepts that migrate out of monographs, terms that become established parts of the social theory lexicon, or insights that catch the imagination of scholars across fields and become the starting point for waves of new research. We have to look to Michel Foucault’s analysis of the panopticon, David Harvey’s spatial fix, or Immanuel Wallerstein’s three-tiered world system for examples of influential concepts with a strong spatial component. Even in these cases, the result has not been to put space in a prominent place in social theory or in the research agendas of colonial history. This book does not

⁹⁹ The problems of using a borderlands approach in understanding imperial sovereignty and interimperial legal politics are evident in Jeremy Adelman’s description of the historical process whereby the uneven spread of sovereignty produced “gray zones that would eventually evolve into borderlands” in Latin America. Adelman agrees with me and other historians who argue that imperial sovereignty is best understood “as a bundle of claims, images, and assertions of authority that can be aggregated at more than one juridical level.” But he views the uneven reach of sovereignty as especially characterizing the “outer boundaries of the governable hinterlands.” In this view, the contingent character of sovereignty in the hinterlands is seen as preparing the way for its tenuous hold later in borderlands zones. “An Age of Imperial Revolutions,” *American Historical Review* 113, no. 2 (2008), 319–40. Yet sovereignty was not simply weaker in such regions but in fact geographically uneven – more like complex puzzles of negative and positive space than gray zones. And the zones were not lawless but, as Adelman argues elsewhere, encompassed within a state legal order purposely constructed as incomplete. *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford, CA: Stanford University Press, 1999), 117–20. In rural areas, caudillos held relatively strong but geographically limited control through spatially irregular networks of patron-client relations. These were not entirely separate from but did intersect with networks of state authority. A focus on complex patterns of legal pluralism is more likely to reveal such patterns than adoption of even a modified borderlands approach.

¹⁰⁰ For a set of compelling essays exploring the development of various approaches to spatial history, see Baker, *Geography and History*, especially 62–71. Baker favors a variant closely related to historical geography and distinguishes the approach from Paul Carter’s emphasis on discourses about place in *The Road to Botany Bay*.

propose a new way of incorporating space in social theory writ large, but it does take seriously the challenge of evaluating the larger significance of understanding the relation between geography and law in European empire. A spatial rendering of exception as imagined by Giorgio Agamben provides a promising but ultimately flawed way of capturing the complexities of European imperial geographies, and Chapter 6 analyzes Agamben's approach and suggests some possibilities for moving beyond his distinction between norm and exception, and for avoiding the stark contrast between European and extra-European legal spheres. The aim is to capture the complexities of a world of spatially and legally uneven empires.